

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Dickinson R. Debevoise
	:	
	:	Crim. No. 11-132 (DRD)
v.	:	
	:	
CARLOS E. ALMONTE,	:	
a/k/a "Omar"	:	
	:	
UNITED STATES OF AMERICA	:	Crim. No. 11-133 (DRD)
	:	
	:	
v.	:	
	:	
MOHAMED ALESSA	:	

MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION
FOR RECONSIDERATION OF FINAL SENTENCE

PAUL J. FISHMAN
United States Attorney
970 Broad Street
Newark, New Jersey 07102
(973) 645-2700

On the Memorandum:

L. Judson Welle
Andrew D. Kogan
Assistant U.S. Attorneys

TABLE OF CONTENTS

	<u>PAGE</u>
PRELIMINARY STATEMENT	1
BACKGROUND	2
DISCUSSION	5
I. The Defendants' Claims Are Without Merit	5
A. The Conduct of the Prosecutors	5
B. The Conduct of the Court	7
II. The Defendants' Motion Is Barred on Procedural Grounds	8
A. The Motion Fails to Demonstrate a Legal Basis to Modify an Imposed Sentence	8
B. The Defendants' Waived the Right to Challenge a Sentence of 30 Years or Less	10
CONCLUSION	11

PRELIMINARY STATEMENT

On April 15, 2013, this Court sentenced defendants Mohamed Alessa and Carlos E. Almonte to terms of imprisonment of 22 years and 20 years, respectively. The Court did so after carefully considering the written submissions of the parties, the oral arguments presented by counsel, and the defendants' statements made during the sentencing hearing.

Notwithstanding the care with which the Court imposed the sentences, the defendants now seek reconsideration on the claim – thoroughly manufactured out of thin air – that the bombings at the Boston Marathon improperly influenced both the government's sentencing presentation and the Court's decision. In support of this fanciful concoction, the defendants allege that the government changed its sentencing presentation mid-stream after receiving a note describing what had happened in Boston. In particular, the defendants allege that one of the AUSAs, after silently reading the note to himself, abruptly changed the focus of his argument from the history and characteristics of the defendants to the need to deter violent acts by homegrown violent extremists and the vulnerability of this region to such attacks. Moreover, the defendants contend the Court too was swayed by the bombings in Boston.

The defendants' allegations are as false as they are sensational: the transcript of the sentencing hearing confirms that the arguments about deterrence were completed before either of the AUSAs received any news of the Boston bombings. Had the defendants bothered to obtain the transcript, they would have realized that their claim – purportedly documented in their notes – was entirely imaginary. Moreover, the Court has already stated, unequivocally, that the bombings in Boston did not affect its decision. Finally, the defendants' motion is barred by federal law and by the terms of their plea agreements. Accordingly the motion should be denied.

BACKGROUND

On March 3, 2011, defendants Mohamed Alessa (“Alessa”) and Carlos E. Almonte (“Almonte”) jointly appeared before this Court and, pursuant to plea agreements, pled guilty to separate one-count Informations charging conspiracy to murder persons outside the United States, in violation of 18 U.S.C. § 956(a).¹ On January 11, 2013, this Court entered orders scheduling the defendants’ sentencing hearing for April 15, 2013.

Prior to the hearing, the parties submitted extensive memoranda, reports, and other materials in support of their respective positions. As contemplated by the plea agreements, Alessa and Almonte requested 15-year terms of imprisonment, while the government requested 30 years’ imprisonment for each of them. The government’s papers expressly and properly included an argument that 30-year sentences would deter other individuals “who would contemplate committing ideologically motivated murder and violence” (Govt. Consolidated Sentencing Mem. at 38). Moreover, the government’s papers cited numerous recorded statements of the defendants indicating that they approved of and desired to commit killings within the United States based on their extremist ideology. (*Id.* at 35-38).

During the morning session of the sentencing hearing on April 15, 2013, defense counsel and the defendants addressed the Court and advocated in favor of the 15-year term. After a lunch recess, AUSA L. Judson Welle presented arguments concerning the factors set forth in 18 U.S.C. § 3553(a) that were common to both defendants, including the need for the sentences to afford adequate deterrence to criminal conduct. Specifically, AUSA Welle asked the Court to

¹ The parties stipulated in the plea agreements that the applicable advisory Guidelines range was 360 months (*i.e.*, 30 years) to life imprisonment.

consider the need to deter homegrown violent extremists from attacking targets in the United States and emphasized the vulnerability of this District and surrounding region to such attacks.

At the conclusion of AUSA Welle's argument, AUSA Andrew D. Kogan² addressed the Court and discussed the history and characteristics of the defendants. During AUSA Kogan's argument, a Special Agent of the Federal Bureau of Investigation handed AUSA Welle – who was seated at counsel table – a note advising that two explosions had occurred at the finish line of the Boston Marathon and that initial reports indicated multiple fatalities. AUSA Welle silently read the note, rose from counsel table, and placed the note on the podium from which AUSA Kogan was addressing the Court. After silently reading the note himself, AUSA Kogan resumed his arguments related to the history and characteristics of the defendants. Neither prosecutor made any argument to the Court based on the events in Boston. Nor did AUSA Kogan reiterate the deterrence argument that Mr. Welle had already made.

The Court took a brief recess of no more than 20 minutes after the government's arguments. Upon returning to the bench, the Court provided the parties with copies of a 43-page Statement of Reasons explaining its sentences. The Court then sentenced Alessa to 22 years' imprisonment and Almonte to 20 years' imprisonment.

A few hours after the sentencing hearing concluded, counsel for Alessa sent an e-mail to the Court's deputy clerk requesting a conference to discuss defense counsel's concern that the Boston events had improperly influenced the sentences imposed.

² AUSA Kogan is the Chief of this Office's National Security Unit, as well as the Anti-Terrorism Advisory Council Coordinator for the District of New Jersey. In those roles, he coordinates and supervises counter-terrorism investigations in partnership with the Federal Bureau of Investigation's Joint Terrorism Task Force.

On April 16, 2013, the Court denied defense counsel's request for a conference, a decision that was relayed in an e-mail from the Court's deputy clerk. Also that day, the Court signed judgments of conviction for both Alessa and Almonte.

On April 17, 2013, counsel for Alessa and Almonte requested a two-week stay of the judgments of conviction in a letter sent by Almonte's counsel.

On April 18, 2013, the Court filed a letter declining to stay the imposition of the sentences. In the letter, the Court advised that "I first learned of the Boston events when someone mentioned them to me as I was about to reenter the courtroom to impose a final sentence." The Court stated unambiguously that "the Boston events had nothing to do with the sentence I imposed."

Judgments of conviction were entered on the docket on April 18, 2013, for Alessa and April 19, 2013, for Almonte.

On April 29, 2013, counsel for Alessa and Almonte filed the instant motion to reconsider the sentences.

DISCUSSION

I. The Defendants' Claims Are Without Merit

The defendants' motion alleges that the conduct of the prosecutors and the Court at the sentencing hearing violated their rights. These allegations are without merit.

A. The Conduct of the Prosecutors

The defendants' motion asserts that the prosecutors colluded to improperly use the news of the Boston bombings to their advantage during the sentencing hearing. (Defs. Mem. of Law at 2-4, 7-10). The lynchpin of this claim is defense counsel's "recollection" that AUSA Kogan – upon receiving a note from AUSA Welle about the Boston events – “abruptly shifted” his arguments away from the history and characteristics of the defendants to the need to deter violent attacks by homegrown violent extremists and the vulnerability of this region to such attacks. (*Id.* at 3; *see id.* at 2-4, 7-10). In particular, the defense submission conjures that AUSA Kogan

began to describe in specific terms the vulnerability of the American urban environment to terrorist attack—the Government cited the streets, bridges, tunnels and public spaces of American cities; it made an appeal in dramatic, inflammatory terms to the necessity of safeguarding the domestic, public environment from the Defendants; and it argued that any sentence to be imposed must deter others from carrying out domestic attacks against citizens in Newark and elsewhere.

(Def. Mem. of Law at 3).

The transcript of the proceedings confirms that these assertions in the defendants' brief are pure and irresponsible fancy. At no point did AUSA Kogan's arguments “shift” from the history and characteristics of the defendants' into other areas, much less into an “inflammatory”

appeal for deterrence. (Transcript of Sentencing on 04/15/2013, at 117:08 - 130:17).³ To the contrary, AUSA Kogan never discussed either: (1) the need for the sentences to deter homegrown violent extremists from attacking the United States; or (2) the vulnerability of this region to such attacks. (*Id.*) Instead, AUSA Kogan addressed only the defendants' history and characteristics, including their prior acts of violence, their mental condition, their rejection of family and jobs in favor of seeking to murder disbelievers in Islam, and Alessa's lack of acceptance of responsibility and blame-shifting. (*Id.*) All of AUSA Kogan's arguments were focused on 18 U.S.C. § 3553(a), which requires the Court to consider the "history and characteristics of the defendant" in determining the sentence.

Had defense counsel bothered to obtain the transcript of the sentencing hearing they would have seen that it was AUSA Welle – earlier in the afternoon and prior to receiving any news of the Boston events – who argued that foreign terrorist organizations are encouraging violent extremists like the defendants to undertake attacks in the United States (*id.* at 113:12 - 114:08), and that this region is especially vulnerable to such attacks due its population density, critical infrastructure, and landmarks (*id.* at 114:09 - 115:14). The defense narrative that AUSA Kogan made these arguments after receiving a note from AUSA Welle about the Boston events is, like so many other accusations of government misconduct made by the defense in this case, a work of fiction.

Nor were AUSA Welle's arguments unfair or surprising. In imposing sentence, the Court is obligated to consider the need to afford adequate deterrence. *See* 18 U.S.C. § 3553(a)(2)(B).

³ Attached are the pages of the transcript that document the prosecutors' arguments at the sentencing hearing.

And the government emphasized precisely that point a month earlier in its sentencing brief, which urged the Court to “send a strong message to those who contemplate committing ideologically motivated murder and violence that they will receive certain and serious consequences for conspiring to do so.” (Govt. Consolidated Sentencing Mem. at 38). That submission also highlighted numerous statements of the defendants that they desired to kill disbelievers in Islam within the United States (*see id.* at 35-38), including Alessa’s statement on November 29, 2009, that he and Almonte would “start doing *kutel* (*transl.* “killing”) here, if I can’t do it over there.” (*Id.* at 35). While the defense is free to contest the significance of such statements, it cannot simply pretend that the defendants never made them. In short, AUSA Welle’s arguments were entirely appropriate.

B. The Conduct of the Court

The defendants allege that the Court violated its sworn duty to fairly and dispassionately sentence them because it pronounced the sentences a few minutes after learning that explosions had occurred in Boston. (Defs. Mem. of Law at 13-14). This claim is also without merit. There is nothing that indicates the Court made a spontaneous decision influenced by the news out of Boston.⁴ Indeed, the Court’s 43-page Statement of Reasons demonstrates that the Court’s sentences were the result of thorough and painstaking consideration of the factual record, as well as the written and oral arguments of all counsel. The Court decisively put to rest any speculation to the contrary in its letter filed on April 18, 2013: “the Boston events had nothing to do with the sentence I imposed.” With no foundation, the defense blithely attacks the good faith and veracity of the Court’s explanation. (Def. Mem. of Law at 13-14 (“[N]o matter how sincere and

⁴ At the time the Court sentenced the defendants, the cause of the explosions in Boston was still unclear.

seasoned the sentencing court, it cannot be said with any certainty that the Court was able to ‘purge’ the horrific news from its mind prior to imposing sentences for these two Defendants convicted of the crimes of terrorism”). That contention is absurd.

Accordingly, the government respectfully requests that the Court deny the defendants’ motion on the merits.

II. The Defendants’ Motion Is Barred on Procedural Grounds

A. The Motion Fails to Demonstrate a Legal Basis to Modify an Imposed Sentence

The defense submissions fail to explain how this motion falls within any recognized exception to the statutory rule that – once imposed – sentences are final and cannot be modified. The principle of finality in sentencing was codified in the Sentencing Reform Act of 1984 in 18 U.S.C. § 3582(c), which provides that “[t]he court may not modify a term of imprisonment once it has been imposed except [under specified circumstances].” 18 U.S.C. § 3582(c). “Section 3582(c) provides for very specific and limited circumstances under which a court may modify a sentence after it has been imposed.” *United States v. Washington*, 549 F.3d 905, 914-17 (3d Cir. 2008); *United States v. Houston*, 529 F.3d 743, 753 n.2 (6th Cir. 2008); *see United States v. Higgs*, 504 F.3d 456, 459, 464 (3d Cir. 2007). Thus, under § 3582(c), “[i]n the sentencing context, there is simply no such thing as a ‘motion to reconsider’ an otherwise final sentence.” *United States v. Dotz*, 455 F.3d 644, 648 (6th Cir. 2006); *accord United States v. Austin*, 217 F.3d 595, 597 (8th Cir. 2000); *United States v. Barragan-Mendoza*, 174 F.3d 1024, 1028-30 (9th Cir. 1999).⁵

⁵ In a recent unpublished decision, *United States v. Bennett*, 2013 WL 563349 (3d Cir. Feb. 15, 2013) (per curiam), the Third Circuit observed that motions for reconsideration are available in criminal cases, but also recognized that 18 U.S.C. § 3582(c) imposes strict limits on the circumstances in which a final sentence can be modified. In *Bennett*, the defendant filed a

The defendants have not shown that any of the “very specific and limited circumstances” in which a court may modify an imposed sentence apply here. For instance, the motion does not seek to correct an alleged “arithmetical, technical, or other clear error.” *See* Fed. R. Crim. P. Rule 35(a); 18 U.S.C. § 3582(c)(B). Further, the motion has neither been brought by the government to reduce a sentence based on substantial assistance in the investigation of prosecution of another person – *see* Fed. R. Crim. P. 35(b) – nor one made by the Bureau of Prisons to reduce a custodial term due to an “extraordinary and compelling reason” or the advanced age of an inmate. *See* 18 U.S.C. § 3582(c)(1). Finally, the motion does not seek a reduction based on a change to the sentencing guidelines. *See* 18 U.S.C. § 3582(c)(2).

Defense counsel’s memorandum of law in support of the motion tellingly ignores 18 U.S.C. § 3582(c). Instead, it cites inapposite cases arising from a variety of procedural contexts – not one of which involved a motion to modify a finally imposed sentence on grounds

motion in the district court to reduce his sentence on one of the grounds authorized in § 3582(c). After the district court denied the motion, the defendant moved for reconsideration of that decision. The court denied the motion to reconsider ruling that: (1) motions to reconsider are available only in civil cases; and, in the alternative, (2) the defendant did not qualify for a reduction as a substantive matter. *Id.* at *2. On appeal, the Third Circuit affirmed, though it disagreed with the view that a motion for reconsideration is available only in civil cases, stating: “Courts have inherent authority in criminal matters to decide motions for reconsideration or rehearing and have repeatedly exercised that authority in the context of § 3582 proceedings.” *Id.*; accord *United States v. Fiorello*, 337 F.3d 282, 286 (3d Cir. 2003) (“[M]otions for reconsideration may be filed in criminal cases”). Although at first blush this statement might suggest that district courts have the authority to entertain motions to modify sentences on grounds beyond those set forth in § 3582(c), a thorough reading of *Bennett* shows that they do not. Indeed, the cases relied upon in *Bennett* for the “inherent authority” proposition all recognized the principle of finality embodied in § 3582 and that the exceptions to it are limited and specific. Moreover, in affirming the district court’s denial of the defendant’s motion to reconsider, *Bennett* itself recognized that “§ 3582(c) provides limited circumstances by which a criminal sentence may be modified.” *Bennett*, at *2. In sum, *Bennett* does not provide a basis for the court to modify a sentence beyond the circumstances recognized in § 3582(c).

beyond the scope of the exceptions set forth in § 3582(c), as is the case here. Indeed, the memorandum concedes that its cases are not on point. (*See* Defs. Mem. of Law at 7).

In summary, because none of the recognized exceptions apply, the defendant's motions should be denied under the rule of finality embodied in 18 U.S.C. § 3582(c).

B. The Defendants' Waived the Right to Challenge A Sentence of 30 Years or Less

In addition, the Court should deny defendants' motion for reconsideration because it contradicts the terms of defendants' plea agreements. Courts have consistently enforced waiver provisions in plea agreements. *See, e.g., United States v. Khattak*, 273 F.3d 557 (3d Cir. 2001). In their respective plea agreements, and in return for concessions by the government, Alessa and Almonte both agreed as follows:

[The defendant] knows that he has and, except as noted below in this paragraph, voluntarily waives, the right to file any appeal, any collateral attack, *or any other writ or motion*, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255, *which challenges the sentence imposed by the sentencing court if the Court sentences the defendant to a term of imprisonment of thirty (30) years or less.*

(Plea Agreement re: Mohamed Alessa, Stipulation 10; Plea Agreement re: Carlos E. Almonte, Stipulation 10) (emphases added). Alessa and Almonte each attested that: (1) he had received and read the plea agreement; and (2) he understood and it accepted its terms. (Plea Agreement re: Mohamed Alessa at 6; Plea Agreement re: Carlos E. Almonte at 6).

At the plea hearing, the Court informed Alessa and Almonte of, and ensured that each understood, the waiver provision. (Transcript of Plea Hearing, 09:24 - 11:19; 25:03 - 26:16). The Court then found that the defendants' pleas were knowing and voluntary. (*Id.* at 25:08-19).

The waiver provisions were triggered when defendants' received sentences of less than 30 years' imprisonment. Further, enforcing the waiver provisions would not result in a miscarriage of justice because, as explained above, the motions are founded on grossly inaccurate factual assertions and otherwise do not present colorable claims of prosecutorial misconduct or judicial error. Accordingly, the Court should enforce the waiver provisions and deny the defendants' motions for reconsideration.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court deny the defendants' motion.

Respectfully submitted,

PAUL J. FISHMAN
United States Attorney

s/ L. Judson Welle

s/ Andrew D. Kogan

By: L. JUDSON WELLE
ANDREW D. KOGAN
Assistant U.S. Attorneys

Date: May 16, 2013
Newark, New Jersey

ATTACHMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CRIMINAL ACTION 11-cr-133-DRD

UNITED STATES OF AMERICA, : TRANSCRIPT OF PROCEEDINGS

S E N T E N C E

-VS-

Pages 1 - 145

MOHAMED ALESSA and CARLOS E. :
ALMONTE, :

Defendants.

Newark, New Jersey
April 15, 2013

B E F O R E: HONORABLE DICKINSON R. DEBEVOISE,
SENIOR UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

PAUL J. FISHMAN, ESQ., UNITED STATES ATTORNEY
BY: L. JUDSON WELLE, ESQ.,
ANDREW D. KOGAN, ESQ.
Attorney for the Government

STANLEY L. COHEN, ESQ.
Attorney for the Defendant

Pursuant to Section 753 Title 28 United States Code, the following transcript is certified to be an accurate record as taken stenographically in the above entitled proceedings.

S/Mollie Ann Giordano
MOLLIE ANN GIORDANO
Certified Court Reporter
(973-220-9465)

1 time being productive. I've learned patience and how to
2 control my emotions, and how to stay away from problems. I'm
3 not the same Omar from three years ago. If I get another
4 chance at life, I would do things a lot differently, due to my
5 maturity and mentality. I'd like to start a family and move on
6 with my life, fix the pain that I've caused to others.

7 Whatever sentence is imposed on me from this Court,
8 you don't have to worry about me coming back to a court in the
9 future to get sentenced again. Thank you for your time.

10 THE COURT: Alright. Thank you, Mr. Almonte. And you
11 can be seated.

12 Now, would it make sense to have our lunch break now,
13 and then the Government, you can go through uninterrupted. And
14 I would think I ought to be able to get the sentencing in at
15 the conclusion. I'll need a little time to reflect on what's
16 been presented to me, and then I should hope that with the
17 Government's presentation, it might take me a few moments to
18 put it altogether and then we could have the sentencing.

19 MR. WELLE: We agree, Your Honor. We'll be ready to
20 go right after lunch.

21 THE COURT: Alright. Why don't we recess until
22 12:30 -- until 1:30, and we'll pick up then. Good, thank you.

23 MR. WELLE: Thank you, Judge.

24 (Lunch recess)

25 MR. WELLE: Can you hear me okay, Your Honor?

1 THE COURT: Yes, I can hear you fine.

2 MR. WELLE: Your Honor, Mr. Kogan and I are going to
3 try to keep our comments --

4 THE COURT: I would like to impose sentence this
5 afternoon.

6 MR. WELLE: We hear you loud and clear on that.

7 I want to speak very briefly about the preliminary
8 matters, the legal parameters about sentencing matters of the
9 public may not know. I do want to briefly talk about the
10 overview of sentencing. I will then proceed to address the
11 arguments that are in common to the defendants.

12 Mr. Patton, I believe, mentioned that there was a
13 joint effort on the part of the defendants in defending the
14 case, and we think it will move things along if I address
15 certain of the 3553(a) factors that are in common before
16 handing it over to Mr. Kogan, who will address the more
17 particularized evidence, and the more particularized arguments
18 that you've heard here today.

19 THE COURT: Good.

20 MR. WELLE: Why don't I start with that. We have a
21 guilty plea here. The defendants have waived their right to a
22 jury trial and everything that goes along with it. In fact,
23 they waived the right to indictment. They pled guilty only
24 after a criminal complaint was filed. And the Government
25 suggests they did so because they knew that the evidence of

1 their guilt is overwhelming. They gave up their right to have
2 a jury of their peers hear evidence about not only the proof
3 that they committed the crime, but also any proof that would
4 support an affirmative defense, an affirmative defense such as
5 duress. An affirmative defense such as entrapment. And we've
6 heard a lot about entrapment, notwithstanding the fact that the
7 defendants have pled guilty and the Government submits that by
8 waiving their right to a jury trial, they essentially move
9 forward fully, embracing the notion that they are in fact
10 guilty.

11 Now, the offense that they pled guilty to, Your Honor,
12 is a serious one, conspiring to murder someone outside the
13 United States. It's a conspiracy to murder. It's not a
14 conspiracy to provide support or vague notions of supporting a
15 terrorist organization. Rather, the object was very clear,
16 they conspired here in the United States to travel abroad, and
17 once abroad, to kill disbelievers in Islam. The disbelievers
18 of Islam.

19 Now, the timeframe of this conspiracy, Your Honor, was
20 addressed in the plea proceedings. The timeframe was nearly a
21 three-and-a-half year conspiracy beginning in October of 2006,
22 and continuing until the date of the defendants' arrests on
23 June 5th, 2010. Part of the plea, Your Honor, also included
24 the commission of overt acts, as Your Honor is aware. Overt
25 acts included travel to Jordan in 2007, in furtherance of the

1 defendants' murder conspiracy. It involved various aspects of
2 training, as you've heard. These included physical training as
3 well as combat training. The overt acts that were admitted to
4 by the defendants also include obtaining money, and also,
5 importantly, agreeing to pool their resources in order to make
6 a more effective conspiracy.

7 The defendants also admitted that they acquired
8 clothing, tactical clothing and equipment that they believed
9 would prepare themselves for a mission abroad. They also
10 admitted that in furtherance of their murder conspiracy, they
11 viewed and played for other extremists videos, audios, and
12 documents that were related to, produced by, and referred to al
13 Qaeda, other foreign terrorist organizations, and al Shabaab,
14 and Anwar al-Alwaki. The defendants also admitted that their
15 attempt to board those two separate flights on June 10th, 2010,
16 were an attempt to join al Shabaab fighters on the battle
17 fields of Somalia.

18 Now, as part of the guilty plea, the defendants
19 acknowledged that they knew at the time of the conspiracy, and
20 they knew at the time that they got on -- tried to get on the
21 aircrafts, they knew al Shabaab was a violent foreign terrorist
22 organization. The defendants also admitted the factual basis
23 of the so-called terrorism enhancement in the guidelines, which
24 is to say that they admitted their offense was calculated to
25 affect Government conduct through intimidation and coercion.

1 And they admitted their offense was calculated to retaliate
2 against Government conduct.

3 Now, we have a plea agreement here, Your Honor, and
4 it's important to quickly review the terms the Government
5 submits. The maximum term of imprisonment that is authorized
6 under the statute the defendants pled guilty to is life
7 imprisonment, and they acknowledged that when they entered into
8 the plea agreement. Of course, the plea agreement also
9 addresses what the applicable guidelines are in this case, and
10 both parties agreed that the applicable guidelines recommend a
11 sentence between 30 years and life. They also agreed that the
12 enhancement I just discussed applied to their offense. And
13 further in the plea agreement, the defendants and their counsel
14 agreed not to challenge that enhancement or the advisory range
15 that it produces.

16 Now, very, very, very importantly, the Government has
17 agreed in the plea agreement not to seek a day over 30 years
18 imprisonment for these defendants. The Government stands by
19 that, and nothing I say, and nothing we've said should be
20 construed as an argument to the contrary. The Government is
21 seeking no more than 30 years imprisonment.

22 Now, part of that is a concession, Your Honor. The
23 Government did not have to make that concession, but we did so,
24 and we are seeking the low end of that applicable guideline
25 range. And we suggest that Your Honor consider that as you

1 consider all of the 3553(a) factors.

2 Now, the plea agreement allows the defendants to ask
3 for a sentence below 30 years, but they may not ask for one of
4 less than 15.

5 Now, Mr. Patton referred to one other term in the
6 plea agreement, and that's the appellate waiver. And the
7 Government was not even going to address that, but there are --
8 there is an appellate waiver that applies to both the
9 Government and the defense. And as to the Government, it says
10 if Your Honor were to impose a sentence between 15 and 30
11 years, the Government would not appeal. Likewise, if a
12 sentence within 15 to 30 is imposed, the defendants would not
13 appeal.

14 Now, we don't really think that's relevant for Your
15 Honor to consider here. Mr. Patton, though, made an argument
16 there. He somehow suggests that the Government is conceding in
17 the plea agreement that a sentence below 30 years would be
18 appropriate. We do not, Your Honor. We strenuously argue for
19 a sentence of 30 years because of the reasons I'm going to
20 discuss here, and that Mr. Kogan is going to discuss further.
21 That sentence is sufficient but not greater than necessary to
22 promote the goals of sentencing.

23 But even if Your Honor though Mr. Patton's argument
24 about the appellate waiver somehow operates as a concession,
25 well then you'd have to admit that it operates the same way

1 against the defense as well. They too have agreed not to
2 appeal if a sentence is imposed up to 30 years. So what's good
3 for one side is good for the other, is essentially my point
4 there.

5 Now, moving on to the sentencing process. The
6 Government is fully confident that Your Honor will follow the
7 Third Circuit's instructions to calculate the guideline range
8 in step 1 and in step 2. You'll consider any downward
9 departures motions. In fact, none have been presented. And,
10 in fact, the plea agreement precludes them. And importantly,
11 in step 3, Your Honor will exercise discretion to consider each
12 and every one of the 3553(a) factors in determining what the
13 appropriate sentence should be.

14 Now, as I stated a moment ago, the goal of sentencing
15 is to impose a sentence that is sufficient but not greater than
16 necessary to comply with the goals of sentencing. And that
17 this too works both ways, that a sentence cannot be more
18 stringent than necessary, but it also cannot be too lenient to
19 essentially sacrifice some of the important goals of
20 sentencing, which will be discussed here. And for sentencing
21 purposes, as Your Honor well knows, involves a sentence that
22 reflects the seriousness of the offense, that promotes respect
23 to the law, that provides just punishment, that affords
24 adequate deterrence to criminal conduct to protect the public
25 from further crimes of the defendant, and to provide the

1 defendant with needed educational, vocational, medical care or
2 other correctional treatment in the most effective manner.

3 And before Your Honor looks to promote those goals,
4 the sentencing statute directs Your Honor to look at the nature
5 and circumstances of the offense, the history and
6 characteristics of the defendant, the kinds of sentences
7 available. And we would say quite importantly here, Your
8 Honor, to consult the Guidelines, and the guideline range, as
9 well as the policy guidelines statements. Moreover, Your Honor
10 should look to the need to avoid unwarranted sentencing
11 disparities among defendants who have been with similar
12 records, who have been found guilty of similar conduct. That
13 concludes the preliminary overview.

14 Now, with regard to common factors Your Honor, these
15 defendants have committed a crime that goes straight to the
16 heart of those 3553 factors that relate to a serious offense,
17 and that implicit need here to protect the public. And that's
18 because what we're dealing with is a conspiracy. This is not
19 just a single person's actions, but rather it's a combination
20 of two people. Two people, when they combine, serve and
21 present a greater risk that their criminal conduct will succeed
22 because they're able to pool their talents and pool their
23 resources. More importantly, Your Honor, it's a conspiracy to
24 commit murder, one of the most serious crimes, if not the most
25 serious crime, without a doubt. Not only to commit murder,

1 Your Honor, but to commit murder on behalf of a foreign
2 terrorist organization. And moreover, to retaliate against
3 Government and to intimidate and coerce. This is essentially,
4 just by the very nature of this offense, an absolutely
5 seriousness offense, and one that demands a serious sentence in
6 order to protect the public.

7 What I'd like to do now is talk a little bit about the
8 evidence. I want to talk a little bit about the evidence that
9 shows that the defendants had a deeply held desire to kill the
10 disbelievers of Islam. When I use the term "disbelievers", I'm
11 talking about the term and knowledge that they used, they
12 referred to disbelievers as Kuffar, Kufear. This is an arabic
13 term that in various translations translates to infidels. Here
14 I'm going to just use the shorthand "disbelievers".

15 Now, first, Your Honor, the recordings that were made
16 in this case from late November, 2009, through the date of the
17 defendants' arrest, provide an insight into what the defendants
18 believed and what they intended. These recordings are
19 extraordinary evidence, Your Honor, that go to the 3553(a)
20 factors: Seriousness, protecting the public. That is because
21 in unguarded moments, the defendants revealed what it was that
22 they were most interested in pursuing, and they only revealed
23 them to an individual whom they believed was one of them.

24 Let's start by looking at the statement of Mohamed
25 Alessa about doing killing here in the United States. Alessa:

1 "We're being pushed by every corner of the earth. They only
2 fear you when you have silah - translation, gun - and you start
3 killing them; and when you take their head and you go like
4 this, and you behead it on camera. Also, that everyone has to
5 be ruthless with these people. We'll start doing kutel -
6 translation, killing - here, if I can't do it over there. I'm
7 gonna get locked up in the airport, then you're gonna to die
8 here then. Major Nidal Hasan, he's not better than me. I'll
9 do twice what he did." This is Mohamed Alessa on November 9,
10 2009.

11 Let's look at another statement, how he would love to
12 receive orders to do attack in the United States. The next day
13 after the proceeding statement whenever they think I'm leaving,
14 they always think I'm gonna come back Yanni. I leave this time
15 in Inshallah - translation, God willing - I never come back.
16 I'll never see this crap hole. Only way I would come back here
17 is if I was in the land of Jihad and the Amir - translation,
18 leader - ordered me to come back here and do something here. I
19 love that. This is Mohamed Alessi talking about receiving
20 orders abroad to come back to the United States and do
21 something here, something he relishes.

22 Let's look at something in Mr. Almonte's statement on
23 May 13th, 2010? "There's no such thing as innocense, Yanni.
24 The Shariah just judges combatants and non-combatants. The
25 west, they elect their systems. If they were really against

1 their president, they would go take him down and try to force
2 him to bring the troops back to this country. If they failed
3 to do something like this, they are all responsible for it.
4 This is Mr. Almonte talking about how individual, ordinary
5 Americans are personally responsible for the acts of the
6 Government which Alessa and Almonte perceive to be at war with
7 Islam.

8 And as we'll see later, Your Honor, their rationale,
9 their rationale assigning personal responsibility for what is
10 believed to be an attack on religion is something that Almonte
11 shared with Anwar Alwacki. And there is evidence in the
12 record, Your Honor, from the April, 2010 Alwacki videoed that
13 defendants watched in which Anwar Alwacki, is being asked about
14 the December 25th, 2009 attempted bombing of a Detroit bound
15 airliner by an individual named Umar Farouk Abdulmutallab. In
16 that video of Mr. Alwacki that the defendants watched. Mr.
17 Alwacki dismissed the notion there's a problem with killing
18 U.S. civilians. He dismissed it because he believed that those
19 lives of U.S. civilians were forfeited because they elect the
20 president, who in turn sends the troops abroad.

21 I just want to move on, Your Honor. Mr. Alessa talked
22 about a -- and described for the UC a scenario, in which he,
23 the UC and Mr. Almonte, would conduct fire fighting with
24 weapons in the streets of the United States. And Your Honor
25 maybe familiar with this because it's in our briefs, but

1 essentially on December 7th, 2009, Alessa said this. "You
2 know, if we did something here, we'd be the first time people,
3 because every other thing that happened here was just an
4 attack. It was nothing like an all-out warfare. UC: Yeah,
5 yeah, Alessa firefighting in the streets. UC: Yeah. Alessa:
6 The streets. I'd like to be, uh, in the streets of -- UC:
7 What streets? Alessa: Untelligible. UC says: Yeah, yeah,
8 you know? Alessa: You know with the cameras, they see you,
9 everything. It'll be like all over the news and we're gonna
10 be -- gonna get shehada - translation, martyrdom - in a few
11 hours. They're going get us, Yanni, but imagine the ru'ab -
12 translation, terror. UC: They're going to fear everything.

13 The statements of the defendants show that they were
14 interested, motivated, and intending to kill disbelievers in
15 Islam, whether it be in the United States or abroad.

16 Here's a statement of defendant Almonte talking about
17 how he believes it would feel good to kill, quote unquote, a
18 faggot. Mr. Almonte: To kill a faggot, like it probably feels
19 very good. To kill a faggot, it probably feels very good.
20 They are definitely not even worth a sword, though. Throw them
21 off a cliff. Mr. Almonte believes the best life he can imagine
22 is killing disbelievers. On this date, December 7th, Mr.
23 Almonte tells the UC, and actually he asks the UC: What's
24 holding you back? What's holding you back to going abroad to
25 kill? He essentially says this: You don't need much, you just

1 need a ticket. You just need some tactical clothing and a list
2 of what you think you need. We know what we have to do, and
3 we're just gonna to it, Inshallah. We need to get out of here.
4 We need to make hijrah, Yanni. He continues and says that:
5 Once you have these necessary things, you go overseas and you
6 get to kill Kuffar, disbelievers. And you take the ghanima and
7 then kill Kuffar. And then the Amir - translation, leader -
8 gets them and distributes it amongst the ranks. And he also
9 says that you get your weapons when you get there and that's
10 the best life.

11 Now, Your Honor, I want to just briefly point you to
12 the record here which shows the items that the defendant
13 brought with them, which absolutely show what they have already
14 admitted, that when they left the airport on June 5th, 2010,
15 they were on their way to a battlefield. This is just a list
16 of the military style clothing, boots, and other gear defendant
17 Almonte had in his luggage. And if I advance further one
18 slide, it's essentially the same gear, clothing, equipment that
19 Carlos Almonte had, and these are the same things that
20 defendant just listed out in the statement that we covered a
21 moment ago.

22 I would also note for the record, Your Honor, that
23 these same items, Your Honor also observed by law enforcement
24 when they served the defendants' luggage when they went
25 outbound on their 2007 trip to Jordan.

1 Your Honor, the defendants also talked about killing
2 other Muslims in the United States. Mr. Alessa, in this
3 conversation on May the 12th, talked about killing any number
4 of groups of Muslims who did not share his ideology. He talks
5 here about wanting to kill those that involves himself in the
6 affairs of Muslim. He talks about wanting to kill the ICPC
7 people, which is a reference to the Islamic Center of Passaic
8 County in Patterson, New Jersey. He talks about wanting to
9 kill the sufis. He talks about wanting to kill the Ahmadis and
10 the Shia. He says this is his belief. He says: I want to
11 kill the Kuffar. This is his list of the people he wants to
12 see killed. This includes other Muslims that do not share his
13 particular set of beliefs about his religion. And I would note
14 for the record that Mr. Almonte was involved in that
15 conversation as well.

16 Now, we also see Mr. Alessa talk about how his beliefs
17 in his violent ideology are so strong that if one of his
18 friends or family members stood in his way, he would want to
19 kill them as well. Mr. Alessa says on May the 17th: I have no
20 problem killing any one of my family members or friends. I
21 have no problem killing you, referring to the UC; or Omar,
22 referring to Almonte, if you would partake or do some active
23 Kuffar. Translation: Major sin. They know that's gonna put
24 my life in danger, or anyone. I told them if you ever
25 apostated, I'll be the first one to slice your throat with

1 pleasure.

2 Alessa and Almonte also discussed how they wanted to
3 see American troops killed. Here's Almonte on June -- I'm
4 sorry, January 31st, 2010. "We don't want to hurt this
5 country. For what, Yanni, I was born here, you know, raised
6 here. I just want the troops to come back home safely and
7 cozily." Alessa: "In body bags, in casekts". AlMonte: "In
8 caskets". Alessa: "Sliced up in a thousand pieces, cozy, in
9 Kabr, the grave in hell." Alessa also told the UC how he
10 believed that he the UC and Almonte were opposed to the United
11 States troops, whom they wished to kill. It was a true us and
12 them scenario, and that was his view, and that was Almonte's
13 view, and it was shared with the UC on September the 7th, 2009.
14 Even Omar, when he made a very interesting point, Your Honor.
15 As we speak, ourakhut - translation, sister - that's in nikabi,
16 that guarded her chastity, her life. That guarded her sharaf -
17 translation, dignity - and all honor for that one assad -
18 translation, lion. The guy who is going to marry her. That
19 one akh - translation, brother. She's being raped multiple
20 times by pigs and by monkeys, blacks and whites. Kafara -
21 translation, disbelievers - and Murtadeen - translation,
22 Apostates - and Omar started crying, Yanni. And then he was
23 like: What the hell are we doing in a balad - translation,
24 Country - that fights our deen - translation, religion - and
25 what are we doing here? Look how easy it is to fight, to fight

1 our deen. All you got to do is enlist in the army and they
2 slip you right over to Iraq. Look how easy it is to go. It's
3 easy for them to fight us, but it's hard for us to fight and
4 kill them.

5 This is the defendant Alessa talking about a
6 conversation that he had with Almonte about how they are
7 finding it very difficult to pursue the object of their
8 conspiracy. It's hard for them to find ways to train, to gain
9 weapons, and he's contrasting with how easy it is to -- for
10 American troops to enlist, to be trained to be outfitted with
11 weapons. All of these statements, Your Honor, served to show
12 that the defendants present a risk to the public, and that is
13 why they need a significant sentence here, and it also shows
14 the seriousness of the offense.

15 Your Honor, I just want to cover one or two more. Mr.
16 Almonte on April the 25th was speaking to the UC, and Mr.
17 Almonte told the UC, Somal, referring to al Shabaab, took over
18 three towns more. "Yeah, they took over three towns from the
19 Government. I don't know if I even see boots from America
20 there Inshallah, God willing." UC: Soon. Almonte: Inshallah.
21 UC: Almonte laugh. UC: Oh, man, can you imagine? Obviously
22 he's saying imagine the prospect of Americans being in Somalia.
23 Almonte: Yeah, it's not much fun killing Africans. Here's
24 Almonte relishing killing American soldiers when he's over in
25 Somalia.

1 Finally, Mr. Alessa said this. "Nah, I swear to God,
2 bro, I wanna like -- I'm not, my soul cannot rest until I shed
3 blood. I wanna like be the world's known terrorist fi
4 al-alam" - translation, in the world - "I swear to God".

5 Your Honor, those are just some of the many statements
6 that this UC recorded of both Alessa an and Almonte in
7 unguarded conversations talking about their desire to see that
8 the object of this conspiracy is achieved.

9 Now, the statements aren't the only thing. Mr. Cohen
10 said Mr. Almonte had a big mouth, and Mr. Patton said these
11 guys would talk to really anyone about it. That's not the case
12 when you look at the record. In conversation after
13 conversation, the defendants were concerned and were aware of
14 who was around them when they made statements such as this.
15 They weren't spouting off to anyone because they understood,
16 they understood that law enforcement had earlier in this case
17 overtly made it known to them that they were under
18 investigation. It was no secret that law enforcement believed
19 and had gathered some evidence that Alessa and Almonte were
20 pursuing a Jihadist objective and they nonetheless made these
21 statements in unguarded moments to the UC.

22 And the other evidence that I want to talk about, Your
23 Honor, and I'm just going to talk about it. We haven't set up
24 videos and we haven't brought up audio equipment here to talk
25 about some of the testimony. I want to talk about these

1 Jihadist videos. Mr. Patton made a lot of comments about it.
2 The Government wants to speak about them. We believe they also
3 evidence the defendants' desire to kill.

4 First of all, the first category the defendants had
5 under this category are depictions of sniper attacks on U.S.
6 troops, of beheading, other executions of ambushes.

7 In this case, Your Honor, Mr. Patton stated that: I
8 stated that Mr. Almonte was a collector of Jihadist propaganda.
9 And he characterized these videos as having been political in
10 nature. Mr. Patton characterized these videos as being
11 political in nature and as having poetry. And I just want to
12 refer to you the record, and in the Government's offense
13 summary in which we describe the graphic depictions of the
14 United States troop in Iraq and Afghanistan falling under
15 attack. The reason it's being killed on camera, the ambushes
16 that are set up with them involve two teams, a team that's
17 going to conduct an attack and the team that's going to report
18 on video the attack for purposes of sending abroad, sending
19 other locations, to allies support their cause and by
20 callousness. And in some of the videos that defendant Almonte
21 watched, we see the camera linger on the United States soldier
22 sitting in a fighting vehicle, and he is just sitting at his
23 post. It looks like a typical day for this soldier. And he's
24 scanning left to right, just looking, you know, exercising his
25 responsibility on that day. And it's ominous because the

1 camera stays on him and he's completely unaware of what's about
2 to happen. And then what you see is this. You see cross hairs
3 superimposed on the video by someone who edited it later. And
4 those cross hairs note, as he sits there, oblivious to what's
5 about to happen, you're witnessing the final seconds of this
6 U.S. soldier's life on the video that Carlos Almonte watched.
7 In a second scene what happens, there's a puff of smoke in the
8 center of the helmet of the soldier, clearly the round pierces
9 the helmet and goes into the helmet and he slumps over dead.
10 And that's one example of the many sniper videos that we're
11 talking about here.

12 This is the material that Mr. Patton suggests was
13 political in nature. It was just inspirational. And again,
14 and again, and given, when you see videos that depict numerous
15 incidents and it's chilling some of these sniper videos, you'll
16 see a platoon of U.S. soldiers going down a street in an urban
17 area, in a populated area, and what happens in Irag, you see
18 the cross hair go up by that clever person to let you know
19 what's about to happen, and what soldier is about to get taken
20 out by a terrorist sniper. And when that first shot comes and
21 that soldier falls down, his comrades do exactly what you'd
22 expect them to do. So they run to him, they pick him up,
23 they're aware of the danger, and yet they're dragging him,
24 trying to drag him to safety.

25 What happens next? That cross hair comes and targets

1 the man who's dragging his fallen brother to safety. What
2 then? Another shot rings out and he falls to the ground. And
3 again, and again, and again, and that's what's in these videos,
4 depicting death of United States soldiers.

5 Mohamed Alessa and Carlos Almonte delighted in these
6 depictions. We point to March 9th, 2010. We describe for you
7 a video and a conversation because when the UC was able to get
8 on the inside of this conspiracy, the defendants showed him
9 videos, made them for him, and he was able to record what their
10 reactions were when they saw these U.S. troops being killed.
11 And on March 9th, 2010, Alessa goes to the computer and starts
12 playing an al Qaeda, Jihad is a video, he plays a scene in
13 which the terrorist have planted a road-side bomb on a road in
14 Afghanistan, and they're up on a ridge line, and the vantage
15 point is looking down at a convoy of U.S. army soldiers in
16 their Humvees proceeding. And the spokesman for al Qaeda is
17 going to say: What's going to happen next? There's an
18 explosion that's about to happen. And when that explosion
19 hits, the video depicts a Humvie blowing apart. And the clever
20 editors have superimposed the sickle, directing your attention
21 to what is seen when the vehicle explodes. It's a body, a body
22 of an United States soldier, end over end, head over heels,
23 flying from the wreckage. Mr. Alessa's reaction? Laughter.
24 Laughter which is recorded on the UC's recorder.

25 Alessa then does something remarkable, he plays the

1 scene back twice more to watch again and again that U.S. convoy
2 getting attacked, that soldier being ejected from the vehicle,
3 end over end.

4 The defendants didn't just delight in watching U.S.
5 soldiers and others being killed from a distance, they also
6 delighted in the depictions that got really up close and
7 personal, and I'm talking about execution videos here, Your
8 Honor. You may have heard them on the news. You may have seen
9 news clips over the past several years about how people are
10 kidnapped and are made to kneel with their arms bound behind
11 them while a series of masked men pronounce their sentence.
12 And they take a knife or a sword and they put the person down
13 on the ground and they start sawing at their neck. And they
14 capture this on video. They capture this on video, this
15 atrocity. And they send it out on the Internet. And they send
16 it out hoping that it's going to reach individuals like
17 defendant Alessa and defendant Almonte, who are going to see
18 it, who are going to delight in it, and who are going to act on
19 it, and that's what happened here.

20 Defendant Alessa had a video on his cell phone of four
21 men bound, doused with gasoline, and lit on fire in a Jihadist
22 execution. A court authorized interception in this case
23 captured multiple beheading videos that Carlos Almonte watched.
24 Almonte said, this is on the UC recordings, "I like watching
25 disbelievers get slaughtered", his words, Your Honor.

1 This wasn't collecting political speech. This wasn't
2 inspirational poetry. It's fellow humans being killed, being
3 killed by individuals like the defendants who had a violent
4 extremist ideology that rendered the lives of anyone who stood
5 in their way, anyone who stood in the way of their ideological
6 objectives, their lives were forfeited and they were fit to be
7 slaughtered. Almonte's words. Alessa, he didn't just watch
8 these videos, he promoted them. He created a website under a
9 fictitious name. The name "salafi witta RPG". Not everyone
10 may know RPG refers to rocket propelled grenade, which is a
11 weapon of choice for insurgents.

12 On his website he puts these videos of U.S. soldiers
13 coming under attack. He promoted them under this assumed name.
14 Not only did this material reach the defendant and motivate him
15 to act in furtherance of this conspiracy, he wanted to promote
16 it even further. In fact, one of the things that the defendant
17 said on one of the recordings, he wishes he could recruit
18 numerous individuals to promote with him and to go -- it's not
19 surprising that Mohamed Alessa converted Carlos Almonte and
20 then carried him away from a view of Islam that is peaceful.
21 Mohamed Alessa and Carlos Almonte, they pursued a violent
22 extremist version of this religion; a strange, tortured and
23 perverted view of what religion required them to do. And it
24 was wrong, and it was completely inconsistent with human
25 rights. And it's completely inconsistent with what others in

1 the community were teaching. And it was inconsistent with the
2 kind of Islam that Yasir Qadhi would talk about, and
3 inconsistent with the view of Islam that Yasir Qadhi promotes
4 in his institute where he holds seminars around the country for
5 Muslims to come and hear moderate views on Islam.

6 The other materials that the defendants made glorified
7 attacks in the United States, attacks like the 9/11 attacks,
8 the Fort Hood shooting in November, 2009, perpetrated by Nidal
9 Hasan, and the 2009 attempted bombing of the flight on
10 Christmas day, Umar Farouk Abdulmutallab. The searches in this
11 case revealed on defendants' computers, actual documents that
12 showed the justification for killing what they saw to be
13 disbelievers. As early as their trip to Jordan, in 2007, a
14 consent search of the Almonte family computer revealed a
15 document, an extraordinary document entitled: Ruling on
16 Killing Persons out of Iraq. This is the material that agents
17 found when the defendants had gone over to Jordan. A search of
18 Alessa's home in June, 2010, revealed a document "Path to the
19 Land of the Battle". The author of this document talks about
20 how it doesn't matter what Jihadist battlefield you go to, it
21 just matters that you go and you participate. You go and you
22 kill. And that is very important, Your Honor.

23 Mr. Cohen made a whole big deal about how Mr. Alessa
24 was considering different places to go. This tells you why.
25 The ideological justification that he was motivated by didn't

1 say you had to go to Iraq, or Palestine, it says "go to a
2 Muslim land where these individuals believe they're under
3 attack, pick up a weapon and start killing."

4 And as I mentioned before, the April, 2010 Alwaki
5 video, and you've seen in our brief and in the papers where
6 Anwar al-Alwaki says that those Americans who came so close to
7 losing their life on that aircraft coming into Detroit on
8 Christmas day, their lives would have been but a drop in the
9 ocean compared to what Alwaki and other like-minded terrorists
10 believed they were owed. Their debt is outstanding. And that
11 even if they fulfilled their debt with some two hundred
12 American lives, it wouldn't come close to balancing the scales
13 to what they believe they're owed.

14 Your Honor, the next thing I want to talk about under
15 seriousness of the offense and protecting the public, is that
16 the defendants controlled their conspiracy. So much of the
17 papers and arguments shift blame or that the defendants were
18 somehow, you know, puppets in some grandiose plan to create a
19 conspiracy. And the evidence shows that is not the case. The
20 evidence shows that the defendants were self-trained. That
21 before they ever met the UC, they were engaging in the combat
22 simulation on the paint ball facility in northwestern New
23 Jersey. And Almonte himself said: This is for preparation.
24 They engaged in the physical conditioning. Alessa said what
25 that was for: Bigger muscles means killing more Kuffar,

1 killing more disbelievers. That's what he told Almonte and the
2 UC on the trips to the gym, hand-to-hand fighting. UC captures
3 on the recording device Alessa instructing Almonte and the UC,
4 and a third individual with the initials MO, in how to conduct
5 disarming tactics and stabbing tactics. What is his guide is a
6 computer hooked to the Internet, playing the very same videos I
7 talked about, videos that are put out to inspire, to educate,
8 and to train. They use the Internet as a tool to prepare to
9 kill disbelievers in furtherance of this conspiracy.

10 Firearms, Mohamed Alessa bragged -- not bragged, he
11 spoke highly of his skills as a marksman. He talked about how
12 he felt when he was overseas and held an AK-47, an AK-47, he
13 bragged and talked highly about his skills as a marksman in
14 connection with his trip to Las Vegas, where he goes to a gun
15 range, and where he shoots handguns multiple times.

16 Now, again, anyone can go to a gun range, there's
17 nothing wrong with that. Fine. But to go to a gun range in
18 the midst of a conspiracy to kill disbelievers in Islam, while
19 you're watching videos and reading documents that are saying
20 the way to pursue Jihad is to get experience with weapons,
21 that's what this is, Your Honor. Alessa even took pictures of
22 the silhouette targets. And when you look at the pattern and
23 the spread of the bullets hitting the targets that I guess Mr.
24 Alessa got to keep as a souvenir, you see he was not making any
25 idle brag about his skills. He talks about how 17 of the 20

1 shots all lit in the target, and that's verified in the
2 pictures that he took.

3 He also studied their attributes. And what I mean by
4 that, I mean that in preparation to go to a battlefield and to
5 use automatic weapons that soldiers use, and the battlefield
6 Alessa studied up on what they were, he studied up on the types
7 of ammunition. He even had a reported conversation, he talks
8 about the attributes of the AK-47 round over the M-16 round.
9 The AK-47 being the ones he anticipated getting in Somalia.
10 And he talks about the AK-47 round like this. "That shit is
11 going to put a hole -- that shit is going to put a hole this
12 big. It's going to tear out your ligament. It's going to rip
13 right through your cartilage of your muscle. It's gonna
14 destroy the bone. I love weapons. I love studying them."
15 That's Mohamed Alessa on January 31st, 2010.

16 What else is worth talking about under training, Your
17 Honor? Defense counsel talked about, you don't see this, and
18 you don't see that. Well, the recordings tell you why you
19 don't see more extensive training because the defendants
20 exercised caution. They didn't want to get caught. They
21 didn't want to get caught like other people had gotten caught
22 in the past. And I believe Mr. Kogan is going to talk a little
23 bit more about that.

24 The defendants were self-directed. This was a
25 three-and-a-half-year conspiracy the defendants admitted to.

1 They formed this conspiracy in October of 2006, through 2007,
2 2008, 2009. They were essentially -- they were in charge of
3 this conspiracy, not anyone in law enforcement. This was
4 mentioned by Mr. Patton, and it is absolutely at the heart of
5 this case and it's significant, and why the Government is
6 seeking 30 years.

7 Leaderless Jihad, it is a concept that was espoused
8 and promoted by Anwar Alwaki in an audio lecture called
9 "Constant on the Path to Jihad". And what that man says in
10 that recording is that you don't have to wait for superiors or
11 bosses or Imams, or anyone else, to give you the green light to
12 go conduct an operation, a Jihadist terrorist operation.
13 Rather, you should look to the fact that there are enemies out
14 there, and you should act on your own.

15 Your Honor, the materials -- I'm sorry, the defendants
16 directed themselves as well through other Internet sources
17 beyond what's been called Jihadist videos. They looked at
18 other videos from respectable newspaper organizations before
19 foreign -- they discussed articles in the New York Times by
20 investigative reporters talking about Americans who had gone
21 abroad to join terrorist organizations. Mr. Almonte even went
22 so far as to go to weapon sites that are devoted to helping the
23 public understand this threat, websites that collect documents
24 from cases just like this one, where people can go and they can
25 look at different defendants different cases brought by the

1 Government. They can look at FBI 302 reports. And they maybe
2 released in the context of this proceeding, during this
3 conspiracy. And the run up to get on that flight on June 5th,
4 Carlos Almonte is on line looking at FBI 302 reports in foiled
5 terrorist plots. Why is he doing that? He's doing that so he
6 won't get caught, so that he won't repeat the mistakes of
7 others. And as with everything else, we know these two are
8 best friends. And if they pursued this three-and-a-half-year
9 period to murder together, whatever one was learning was
10 helping the conspiracy. Whatever fighting tactics Alessa
11 picked up helped the conspiracy. And whatever information
12 Almonte got through his research was helping the conspiracy as
13 well.

14 One of the things they looked at was videotapes
15 release, the prosecution that occurred right here in this
16 district that Judge Kugler presided over. It involved a trial.
17 The lead charge was very similar to this, conspiracy to murder.
18 And the defendants were convicted at trial. And in the course
19 of those proceedings, a video was released. And it was
20 subsequently posted to the Internet, and it depicted the
21 defendants in that case doing target shooting, doing target
22 shooting at a facility in the outdoors. And in that video they
23 are shooting at targets and calling out the Takbir, which is an
24 exclamation that is used in innocuous circumstances, but is
25 more famously used in situations in which terrorist acts are

1 loud, they're calling out this phrase, and that was in the
2 defendants' view one of the things that got the Fort Dix
3 defendants caught in the first place, is the fact that they
4 were going outdoors conducting training in a way that might
5 attract attention and suspicion. And later on, when these
6 conversations happened about how else they might consider
7 preparing, Carlos Almonte, having seen these videos, says -- he
8 references the Fort Dix guys getting life sentences, and he
9 exercises his caution and discretion not to do that.

10 Your Honor, before I move on, I just want to also note
11 the defendants funded their own conspiracy. Mr. Patton gave a
12 view of how these tickets were purchased that I have to say I
13 think is just inaccurate. Carlos Almonte worked a job at a
14 computer store. He scrimped and he scraped, and he was
15 disciplined, he had amassed several thousand dollars worth of
16 savings. Excuse me. He transferred that money, that if he
17 carried it in cash, it would end up getting seized by law
18 enforcement as they traveled to Somalia. It's all over the
19 recordings. And so he deposited his money into the UC's bank
20 account for safe keeping.

21 Now, the tickets about purchased for Almonte and the
22 UC By Almonte, he sat down at the computer at the UC's
23 apartment. He researched the date, and he picked the date, and
24 he did that transaction on line.

25 Now, because the money was in the UC's account, Carlos

1 Almonte's money was being transferred to the UC's account.
2 They used the UC's. And so they were very clear that each was
3 paying for his own ticket. So while the UC's car may have been
4 used, the funds for Almonte's ticket came from Almonte, and
5 likewise Alessa. He secured his own ticket, whether these were
6 family contributions. What we do know is this. The UC didn't
7 buy a ticket for Alessa, didn't make him buy a ticket. In
8 fact, Alessa showed up at the airport with a ticket and \$3,000.

9 So here the defendants got their own money, they
10 pooled their own resources, and after spending the money on the
11 flights, the training, opportunities, paint ball equipment,
12 clothing, collectively between the two of them, they had
13 \$12,000 in cash and bank deposits to fund their onward travel.

14 Your Honor, the evidence also shows that the defendant
15 had a sustained commitment. They had made this prior attempt
16 to Jordan. A lot has been said on this. I know that Your
17 Honor understands that this trip was taken in furtherance of
18 this murder conspiracy, principally because the defendants
19 allocuted and admitted that it was. In Jordan, 2007, they
20 traveled together. They lived together. They pursued Jihad
21 together. They linked up with a veteran Jihadist referred to
22 as Abudebah.

23 Now, at several times in the presentation of the
24 defense they talk about the Government painting things, and the
25 Government making things up, or what the Government is

1 presented to Your Honor is the record, is the evidence, it's
2 what's in the record. If there's paint ball activity, that the
3 defendant said is for Jihad, for the record, that's what we're
4 pointing you to. If Mr. Almonte tells the psychiatrist in
5 Jordan he met up with a veteran Jihadist, the Government is
6 presenting that to you.

7 Now, Your Honor, what did Almonte say about this man?
8 He said that he met frequently with this man at his home, he
9 and Alessa did in April, 2007, and Alessa received teaching
10 about Jihad and tack fear. Tack fear being the term for
11 ex-communication. And in certain instances being used by
12 violent extremists to justify the killing of other Muslims,
13 that they make a decision on the spot to killing another Muslim
14 for being unfaithful to the religion or turning their back on
15 the religion. And in Almonte's memoranda it also revealed that
16 Almonte and Alessa made inquiries about getting into Iraq and
17 Afghanistan from Abu Obaidah, according to Almonte, shared
18 essentially his Jihadist pedigree. That he was in Afghanistan
19 training around 9/11. And that when the U.S. aerial
20 bombardment started, he and other militants fled. He was
21 captured, and he was put in Guantanamo Bay, subsequently
22 released, went back to Jordan. And when he got back to Jordan,
23 according to Almonte, Abu Beta tried to get into Iraq in 2006.
24 He was caught doing that, and he was jailed and released after
25 a year. This is the mentor. This is the individual that the

1 defendants managed to hook up with, managed to find to mentor
2 them in Jordan.

3 And you know this isn't made up, Your Honor, because
4 it's coming from too many sources. First, the defendants
5 admitted in their plea, Alessa talks about trying to go from
6 Jordan to Iraq on the recordings. And it's in the Almonte
7 memos, as I mentioned, family members alerted law enforcement
8 to the fact that defendants were going to abroad to kill
9 persons. This all should lead Your Honor to the conclusion
10 that in 2007, these two defendants tried to go abroad to kill
11 U.S. soldiers. They tried to find a way to get there from
12 Jordan.

13 I want to respond to two quick points. Mr. Cohen
14 suggests that because Mr. Alessa did not want to be driven to
15 the border of Iraq and Afghanistan by his uncle and dropped off
16 there, that it can not be the case that the defendants actually
17 wanted to go to Iraq.

18 Well, that's the same as being on an airplane with
19 someone and having a person refuse to jump out of the airplane
20 without a parachute. That doesn't say that the person wouldn't
21 sky dive with the parachute, it's just that they don't want to
22 jump out without protection. Of course, he didn't want to be
23 dropped off at the border while U.S. fighters were being
24 dropped in and the U.S. was locking down their border.

25 If you would pause for one minute, I think I have to

1 queue up this presentation again. Thank you for your patience,
2 Your Honor. One more moment, I'll find where I am on paper.
3 What else, Your Honor, what else shows that the defendants had
4 a sustained commitment? Well, in Jordan, Mohamed Alessa
5 attracted the attention of law enforcement there, or as Mr.
6 Cohen said, security services. And I'm not going to respond to
7 Mr. Cohen's aspersion cast on foreign law enforcement agencies
8 with regard to torture and other things. But even if you
9 accept Alessa's presentation on that, at face value, what it
10 says is that the Jordanian investigators knew that Alessa
11 presented a problem, and they wanted to be rid of that problem,
12 and they reached out to Alessa's family, and that they engaged
13 with them, and they didn't undertake any precipitous action.

14 And so there's a parallel there, Judge, because that's
15 the same thing that happened in this case. In the earliest
16 stages, law enforcement in this case was seeking to deal with a
17 problem of Alessa, the fact that Alessa was threatening people,
18 was invoking bombings, invoking terrorism, putting others in
19 fear, family members, Almontes family members, his family
20 members, people at his school. So despite the fact that he and
21 Almonte were approached by officials in Jordan who were
22 essentially concerned that they were pursuing Jihad, they
23 continued with it anyway.

24 Now, Almonte was essentially given the strong
25 suggestion by the Jordanians that he should leave, and he did

1 very shortly thereafter. Mr. Patton says that there's
2 speculation going on, about why he left. There's no
3 speculation, Your Honor. Mr. Almonte wrote you a letter in
4 which he says, in his memoranda as well as to Dr. Xenakis, "I
5 ran out of money. The Jordanians came down on us. My mother
6 was sick. It was a combination of factors." But he got out of
7 there. He didn't have a path to Jihad because, as his
8 memoranda says, Abu Obaidah says the way was closed. He
9 himself had tried to go but he could not. That's why he didn't
10 get to Jihad then.

11 Same way with Alessa, he ultimately left Jordan, and
12 when they came back, that's when the law -- that's when federal
13 law enforcement essentially went overt in this case.

14 The FBI interviewed Alessa and Almonte about their
15 overseas activities. Made it very clear that they had serious
16 questions that needed to be answered about their activities in
17 Jordan. They didn't have complete insight into what had
18 happened in Jordan, but they were concerned, based on the
19 things that members of the public had told them, people who
20 knew the defendants best told them that these individuals had
21 gone abroad to try to go commit Jihad, and now they were back
22 in the United States. This was a big problem.

23 They were served with grand jury subpoenas.
24 Remarkably one of the -- one of the FBI agents got on the phone
25 with Alessa's mother and explained the nature of the inquiry in

1 response to her questions. This was emblematic about how law
2 enforcement acted in this case. This wasn't scalp hunting,
3 this wasn't entrapping behavior, this was about dealing with a
4 situation that presented to any objective person indications of
5 risk to the public. But they weren't going off half cocked.
6 They weren't hiding the ball from Alessa or his family about
7 why they were investigating, or what they were interested in,
8 or what questions he would face in the grand jury. Basically,
9 they told him "we're going to ask you about Jihad. Are you
10 committing Jihad? Are you trying to commit Jihad? Why are
11 people saying these things about you?"

12 And when the defendants in late 2007 came to the grand
13 jury room right across the street to answer questions like
14 that, but they didn't talk about Abu Obaidah, they didn't talk
15 about their interests in finding a way to Iraq or Afghanistan.
16 And so after that appearance they continued with the
17 conspiracy, nonetheless. And that is really significant,
18 Judge. Because if they weren't serious, or if they cared about
19 their freedom more than they cared about pursuing the object of
20 the conspiracy, it would have ended there. These individuals
21 were put on a witness stand and asked in a federal
22 investigation, about terrorism and their activity. For them to
23 leave that grand jury room and continue with the conspiracy, as
24 their plea allocution shows they did, it's remarkable, and it
25 shows how serious this crime is. It shows that the defendants

1 are not going to be deterred, and the public needs to be
2 protected, and that did only happen by a significant sentence
3 here.

4 Now, Your Honor, I want to talk just briefly about
5 some arguments the defense has raised in common to marginalize,
6 to dismiss, to spin the seriousness of this offense. As I
7 mentioned before, the defendants waived their right to a jury
8 trial, they waived the opportunity to persuade a jury that they
9 were entrapped. And had they done so, had they reached one
10 juror and convinced one juror that they were entrapped, they
11 would have -- they would have not been convicted as they were.

12 But they pled guilty because they knew they were
13 guilty, and they knew the evidence proves they're guilty, and
14 such defense would not have been viable because they were not
15 entrapped. Despite suggestions that they've taken
16 responsibility for what they've done, and we heard a lot of
17 that, but frankly the arguments of counsel are trying to attack
18 the investigation, trying to shift blame, and trying to suggest
19 almost entrapment like is a phrase that I think would apply
20 here. And so they talk about scalp hunting, and they talk
21 about how agents manipulated the defendants in seeking
22 headlines in this case.

23 If the agents had been intent on arresting as many
24 young men as they could have, other individuals involved in
25 this case would also be here, wouldn't they? They'd be sitting

1 right there with a conspiracy to murder, because this training,
2 watching these videos, these incriminating conversations, they
3 happened with more than just a defendant. They happened with a
4 young man named KR, a young man, MO. But they're not here,
5 Your Honor. They're not here in this courtroom sitting next to
6 the defendants. It flies in the face of the defense suggestion
7 that what happened here was an indiscriminate effort,
8 regardless of the defendants, to lock up as many people as they
9 could. It's over blown rhetoric, and Your Honor should dismiss
10 it as such.

11 When you look at the record, and we laid this out very
12 clearly for Your Honor in our moving papers. We talked about
13 how the UC in this case did not meet either defendant before
14 March, 2009. And in March, 2009, the UC was introduced to
15 Almonte by KR, the young man who hasn't been charged in this
16 case, but who participated in many of these activities. And
17 so, again, it's not as if the agents in this case sent the UC
18 to go get Alessa and Almonte. And also as we pointed out, the
19 UC in 2009, wasn't even aware of the FBI's investigation. He
20 was not part of their investigative team. That later changed
21 but at the time he met the defendants. He wasn't sent there on
22 any orders by this federal investigation to target those
23 individuals. It's just undermined by the record.

24 Mr. Patton was confused, I believe, and not really
25 certain of the facts when he said them, but he said that in the

1 first recorded meeting, the UC mentioned getting the defendants
2 to overseas. It's just not true, it's just not accurate, and
3 we laid this all out in our sentencing memoranda, Your Honor.
4 There first meeting after Alessa had said he wanted to do twice
5 what Nidal Hasan did at Fort Hood, after he said his soul could
6 not rest till he shed blood, after he said he wanted to be the
7 world's most known terrorist. The UC revealed himself to be
8 like-minded. That is what the UC did in the first meeting that
9 was recorded in late November. But it wasn't until January
10 that he said this. On January 6th, 2010 Your Honor, I'm
11 reading from page 39 of the Government's consolidated
12 sentencing memoranda, "Alessa stated all you need is the
13 connect." Okay, Alessa telling the UC that what Almonte and
14 Almonte, all they're waiting for, all that they need is a
15 connect, because otherwise they're ready to go kill. That is
16 as clear a statement as one could get that these defendants are
17 ready and willing and contemplating going abroad to kill. And
18 they're essentially saying: All we're looking for here is
19 someone who will give us safe passage; otherwise, we're ready.
20 That is when the UC, for the very first time, mentions the fact
21 that there is a way for him to get the individuals he knows
22 overseas to help him out, and it's right there on page 39. He
23 says this. "I could arrange one, I could arrange it, you know,
24 if you guys really want to go one day." Almonte immediately
25 says "summertime", Inshallah, God willing. The UC almost does

1 a double take. He says: Huh? Almonte: Summertime. UC:
2 Yeah. Almonte: And if we wanted to go now, like a tough time
3 right now at the airports. It's bad. You saw how everyone's
4 stuck up and everything. What he's referring to is a few days
5 earlier Abdulmatallab attempted to bomb the airliner. So the
6 airport security ramped up security. After the UC slightly
7 suggests there might be a way, Almonte says "summertime" and
8 "ready to go." I don't have to go over the whole thing, Your
9 Honor, it's laid out in our brief.

10 Alessa and Almonte proceed to talk about early.
11 Alessa and Almonte talk about round trip tickets, one-way
12 tickets. The UC is sitting back and recording this. He's
13 suggesting there might be a way to get safe passage, after they
14 say "all we're waiting for is safe passage".

15 There is a lot said before who this UC was, an older
16 person. I don't know where that came from. The defendants
17 spent months with the UC, he's a young man just like them.
18 He's in his 20s. In fact, a few days before they left for
19 Somalia, Alessa says: You're just like me. He says: You're
20 just like me. He's asking the UC: What kind of guns do you
21 think we're going to get over there? And the UC says: I don't
22 know, I haven't done this before. And Alessa says: You're
23 just like me. He wasn't some veteran Jihadist. He wasn't some
24 older individual, Dr. Abudabbeh makes him out -- Dr. Abudabbeh
25 makes him out to be some mentor figure. It's just not there --

1 it's just not there on the recording.

2 And as we've already gone over, the defense had
3 everything they needed well before they met the UC, and so the
4 UC wasn't a mentor. He wasn't a role model. But who was? As
5 I mentioned, Abu Obaidah, he was a mentor. Who else was? How
6 about someone defendants refer to as Sheikh Anwar? They use
7 that honorary term. Who is Sheikh Anwar? Anwar Alwaki, that's
8 who it is. It's him who put out the audio recording about
9 leaderless Jihad. And the defendants had on their cell phones
10 and they played it in the car on the their way to go lift
11 weights. And at one point they made the portion where Alwaki
12 says it doesn't require a leader. And Almonte, I believe it
13 was Almonte, who reaffirms that. He says: It doesn't depend
14 on the other guy. A lot of so-called scholars say it depends
15 on a leader, but that's not what Sheikh Anwar is calling for.
16 And they certainly believe he was an important figure.

17 But here's the thing, Your Honor, many people have
18 heard these recordings and haven't gone on to commit crimes.
19 It's not the fact that these recordings exist that makes
20 someone do things, it has to do with the individual. And
21 that's what you have to do here, the Government submits
22 respectfully, is not look at the fact that there's efforts
23 being made to create terrorists in the United States, but
24 rather look at individuals who, despite warnings, and
25 interventions, and obstacles, are so committed to that, that

1 they proceed with that murderous objective nonetheless.

2 Briefly, Your Honor, Nidal Hasan, a role model,
3 Alessa, plays for the UC a recording. In there an al Qaeda
4 spokes man, who's an American, by the way, is speaking in
5 English to American audience about how Nidal Hasan's actions at
6 Fort Hood make him a trail blazer and a role model to be
7 followed. And it's at that very point in the recording that
8 Alessa says to the UC: You know what he's doing? That is the
9 spokesman, he's calling for attacks here. That is Alessa's
10 interpretation. And how could it be otherwise? Nidal Hasan is
11 a trail blazer.

12 THE COURT: Mr. Welle, you're going terribly long to
13 prove what's already admitted.

14 MR. WELLE: I'll move it along, Your Honor.

15 With regard to Somalia, another young man had traveled
16 there, another American. The defendants knew who he was. They
17 wanted to follow in his footsteps. Alessa had a picture of him
18 on his phone. His name was Omar Hammami. They watched videos
19 showing his exploits in Somalia.

20 Your Honor, I want to just talk briefly about Yasir
21 Qadhi. One of the defense's mitigation arguments is that
22 there's this profile that Mr. Qadhi endorses called Jihadi
23 Cool. A number of problems with that. First, there's nothing
24 to suggest that Mr. Qadhi is a social scientist. There's no
25 training. There's no credentials in social sciences. He tries

1 to promote this profile and put Alessa into it, and somehow
2 conclude that all of his conduct should be either dismissed or
3 minimized because of this profile.

4 The problem is, as you will recall, there were not any
5 external sources cited in the record. He had not written any
6 papers. In fact, I think the only one thing he tries to point
7 to in support of this as being an actual verified phenomenon,
8 outside of his own anecdotal experience, is an MPR, you know,
9 four-minute radio report. It's certainly not the stuff of
10 empirical research. It's certainly not the kind of thing that
11 would justify Your Honor to dismiss lightly or find minimizing
12 all that's involved here.

13 Your Honor, Mr. Qadhi's, as Mr. Cohen admits, is not
14 even a Ph.D. He's completed his requirements, but he's not a
15 Ph.D. But it's unfortunate, in his report in 2009 in this
16 case, he says that he is. I just want to note that for Your
17 Honor for whatever you think that's worth. And despite the
18 fact that he's not a Ph.D, how about the fact that he never met
19 Alessa? In the 24 months that these defendants were being
20 sentenced, had never met Alessa. But he purports to put in him
21 in a profile that he's discerning of a more lenient sentence.
22 I can go on and go with Yasir Qadhi. His bias is apparent as
23 well, Your Honor. He criticizes law enforcement in the report,
24 itself. He's just not an objective observer.

25 He talks about the report being based on anecdotal

1 evidence. There's no statistical study done. Moreover, the
2 information he got from Alessa was through correspondence with
3 counsel. We know that Your Honor is familiar with it, but in
4 this report, Yasir Qadhi is making grand claims about who
5 Alessa is, about what this crime is, and its significance. But
6 he only asked Alessa four questions, and he asked them in
7 writing. And they were delivered by defense counsel. And in
8 writing answers came back. There's no opportunity for
9 follow-up. And you know, Your Honor, in summary, we would say
10 that there's just not -- in all that's involved here, Your
11 Honor should give that report very little weight.

12 Your Honor, moving on to deterrence. Just briefly
13 on -- briefly on general deterrence. The sentence Your Honor
14 imposes today will send a message. The question is, what will
15 that message be? I just want to impress upon you, Your Honor,
16 that the Government submits that conspiracy to murder, any
17 conspiracy to murder, is serious, and that should get a serious
18 sentence. We wouldn't want to send a message that, you know,
19 courts don't take that seriously.

20 More particularly, in this context of leaderless
21 Jihad, the defendants here, we think, are emblematic of this
22 concern that the Government has and the public should have
23 about home-grown, violent extremists, people like others who
24 have pursued Leaderless Jihad.

25 Now, I know that foreign terrorist organizations are

1 pivoting, I think they seem to be, at least they are trying to
2 promote individuals to act without connection, without orders,
3 without funding. They're asking people to pull themselves up
4 by their boot straps and commit terrorist crimes right here in
5 the United States, just as the defendants did. And in some
6 ways these individuals are small groups of people, like the
7 defendants, you know, they're decentralized. They're harder to
8 figure out if the person is a threat, is not a threat.

9 Your Honor, also with regard to deterrence, this area
10 of the country is especially vulnerable with regard to these
11 issues. As you know, economic, cultural targets, and all these
12 things are all close to, you know, this courthouse, or a
13 proximity to New York, bridges, tunnels, the population
14 density. All these things make this district particularly
15 vulnerable. The reason we point it out, the message you send,
16 if you send a message, home-grown, violent extremism will be
17 met with serious consequences. It will be less likely the
18 Government believes that people will engage in these crimes.

19 Your Honor, this is just one of several instances of
20 individuals who have acted criminally in this district or in
21 ways touching this district in this area. You know, there's
22 the landmarks, the plot with the Blind Sheikh that targeted the
23 Lincoln and Holland Tunnels. The 9/11 terrorists flew out of
24 Newark Airport. Fort Dix. Najibullah Zazi, which is the case
25 involving a young man who got on an airplane in Newark Airport,

1 on June, 2008, flew to Pakistan, where two of them got training
2 from al Qaeda, and they came back the next year and attempted
3 to create explosives and to bomb the New York City subways, to
4 be thwarted by New York City subways -- to be thwarted by law
5 enforcement. And to come back with plans to attack the U.S.
6 homeland is an exceptionally serious problem.

7 And in addition to Faisal Shahzad, he was a
8 Connecticut resident, the Times Square bomber. He traveled
9 abroad, came back with explosives, explosives training and came
10 back with funding, and he attempted to bomb Times Square in
11 May, 2010. That's the concern, that people will be committing
12 these conspiracies, pooling for resources, going abroad,
13 getting training, getting resources, and coming back to attack
14 the United States.

15 Your Honor, the 3553(a) factors also call upon you to
16 consider the Guidelines, themselves. You're familiar with the
17 reasons for that, the Sentencing Commission obviously has
18 considered all the factors in meting out the particular
19 guidelines.

20 And then just -- Your Honor, in closing, before I turn
21 it over to Mr. Kogan to talk to some of the particulars to
22 impose the Government's requested sentence, we submit would not
23 create an unwarranted sentencing disparity. Your Honor, we
24 said in our papers that it's very difficult to compare cases,
25 one to another, to another, because there's any number of

1 factors that can distinguish them. We pointed out a number of
2 examples. Mr. Cohen has submitted his survey of cases. If
3 Your Honor is inclined to look outside of the cases, to look at
4 other cases to see where they would Sheikh out, we would ask
5 you to look no further than this district, to look at the Fort
6 Dix cases. And in the Fort Dix case, the defendants there,
7 five men who conspired to murder based on the same ideological
8 motivation as these defendants who engaged in very similar
9 acts. And admittedly there was a trial, and admittedly and
10 appropriately their sentence was higher than the ones that
11 should be imposed here. But these defendants have pled guilty,
12 and of course they have a plea agreement. And they enjoy the
13 right of that bargain where the Government is not asking for
14 anything more than 30 years. But it's a reference point. The
15 life sentences imposed on four of those defendants for a
16 similar conspiracy, those suggest strongly that a 30-year
17 sentence here would not create a disparity. And moreover, Your
18 Honor, the fact that what the Government is proposing, that is
19 a low end guideline sentence, itself, strongly suggests to Your
20 Honor that there would not be a disparity created. We're
21 within the Guidelines. And, in fact, we're at the low end of
22 the Guidelines.

23 At this point, Your Honor, I'd like to ask Mr. Kogan
24 to come up and talk to you a little bit about the individual
25 characteristics of the defendants.

1 THE COURT: That would be fine, Mr. Welle.

2 MR. PATTON: Can I run to the rest room?

3 THE COURT: You want a recess?

4 (Recess)

5 THE COURT: Alright. I think we have everybody we
6 need.

7 Yes, Mr. Kogan, go ahead.

8 MR. KOGAN: Thank you, Judge. Your Honor, as Mr.
9 Welle indicated, I talk to you about something more, particular
10 characteristics of the defendants.

11 THE COURT: Alright.

12 MR. KOGAN: The first thing I'd like to talk to you
13 about is defendant Mohamed Alessa's lack of acceptance of
14 responsibility. This goes to both step 1, finding the
15 Guidelines, and step 3 of your analysis today. I start Your
16 Honor off with something that defendant told Qadhi, one of the
17 experts defense has in this case. "I never wanted to kill
18 anyone". That's a direct quote from the defendant. Your
19 Honor, that flies in the face of the conspiracy to which he
20 plead guilty. You cannot resolve the two comments together.
21 The conspiracy was a conspiracy to commit murder. Mr. Alessa's
22 comments were, he did not want to kill anybody. Under a
23 stipulation, the defendant has to continue to accept
24 responsibility through today, through the time of his
25 sentencing. He has not done so, based off that comment, and

1 based off other things. You've heard some today, but it's more
2 in his submissions.

3 The defendant would like Your Honor to believe that
4 the trip to Jordan was not part of the conspiracy. I'm not
5 going to quote from the defense counsel's submission about his
6 comparison of the cat eating the tuna, but defense counsels and
7 the defendants, Your Honor, submit to Your Honor their trip is
8 not part of the conspiracy. That simply is not true. The
9 defendant pled before Your Honor and told Your Honor that in
10 furtherance of the conspiracy, he traveled to Jordan in 2007.

11 What else do we know, Your Honor? We know that
12 defense counsel for Mr. Alessa, and Mr. Alessa has attacked
13 some of the other overt acts. Single person shooter is done by
14 everybody. Paint balling is innocuous. The clothing they
15 bought he's been wearing since he's twelve. Your Honor, they
16 are trying to have their cake and eat it too. They came before
17 Your Honor, Mr. Alessa did, and he told Your Honor, "I
18 conspired to kill people. And in furtherance of that
19 conspiracy, I trained, and I purchased clothing and hydration
20 systems." He should not be allowed now to come before Your
21 Honor and say, you have to view it in context, everybody does
22 it, it's no big deal. It is a big deal because he told you it
23 was a big deal when he said that was part of his conspiracy
24 with Mr. Almonte to travel overseas and kill people. He should
25 not be allowed to walk away from his acceptance at this time.

1 THE COURT: Alright. Go ahead, excuse me.

2 MR. KOGAN: Thank you, Judge.

3 Furthermore, Your Honor, the defendant relies on
4 experts. And I'll talk about them more in a minute, who denies
5 his culpability, who caused a fantasy. You heard defense
6 counsel talk today, about maybe he would have never done
7 anything. Once again, Your Honor, the Government is going to
8 let the defendant and his counsel talk about what could have,
9 maybe should have been. The Government is going to bring you
10 back to the facts, bring you back to the evidence. The
11 conversations, the recordings, the videos, and the defendant's
12 plea to Your Honor that he was in this conspiracy. He is no
13 longer accepting responsibility for that, planned and bald
14 statements otherwise.

15 He also does not accept responsibility by attacking
16 law enforcement. To quote but a few, there's a case building
17 agenda. You've heard scalp hunting time and time again today.
18 You've seen by submissions, enticed, possibly exploitive
19 actions, Your Honor. Those are largely in reference to the
20 person being spoken about today, the Bassem, the UC who the
21 defendants met in 2009. But the defendants told you when he
22 pled guilty before you, this conspiracy started in 2006. To
23 lay any blame, blame soliciting allegation that this was a
24 scalp hunting enticement exploitive, is denying his acceptance
25 of responsibility. Defense counsel tried to walk that fine

1 line and tell Your Honor he does accept, you have to look at
2 things. No, that's not accepting, Judge, and shouldn't be
3 allowed to stand.

4 And in addition to his outright, Your Honor, lack of
5 acceptance, defendant also tries to shift blame for his action.
6 "It's not my fault. Yeah, I did it but here's why. I'm
7 sympathetic, I deserve Your Honor's leniency, a significant
8 variance to the low end". He blames almost everybody, Your
9 Honor. He blames America's lack of cultural sensitivity. He
10 blames his parents for being indulgent and loving him. He
11 blames local Imams for not sending him down the right road. He
12 even says at one point, Your Honor, in his papers, that he is
13 sympathetic, and he deserves leniency because, AH, his domestic
14 partner or wife, I'm not sure how you should refer to it, AH
15 left him and ended their marriage. And that was part of the
16 perfect storm that defense counsel's talks about.

17 Well, Your Honor, defense counsel talked today about
18 AH leaving him, he just left one thing out in talking about
19 that, the reason she left him.

20 THE COURT: He was going around with other women.

21 MR. KOGAN: That, Your Honor, and he choked her --

22 THE COURT: Not following the Muslim rule.

23 MR. KOGAN: In defense counsel's own papers, Mr.
24 Alessa struck that lady and he choked her, and that's why she
25 left. But somehow that plays to the defense benefits that he

1 could choke someone. He also blames over consumption of
2 caffeine liquids and supplements. The schools that he went to.
3 The fact that he got kicked out and withdrawn from many
4 schools. What he fails to tell you at one of the schools he
5 threatened to blow up the school. It is the defendant's action
6 that lead us here today. It's not beverages, supplements,
7 schools not doing right by him. It is the defendant, Your
8 Honor.

9 Your Honor, there's only one thing that the defendant
10 truly does not blame, that's the person sitting two seats down
11 from him, Mr. Almonte. At no point does Mr. Alessa, anywhere,
12 say anything negative about Mr. Almonte. That's because they
13 were the two people who entered into the conspiracy. The best
14 friend, I believe you heard Mr. Almonte say today. The two
15 people who entered into this conspiracy over more than three
16 and a half years, to travel overseas, and at the end of the
17 day, go to Somalia, join a foreign terrorist organization that
18 has committed, and continues to commit, murder and kill while
19 there. That's where the blame should be assigned, Your Honor.
20 The defendant and his actions, and his conspiracy.

21 Your Honor, I'd like to talk to you about the mental
22 condition of Mr. Alessa a little. We've heard a lot about that
23 from defense counsel. I'm going to talk to you about that same
24 thing for Mr. Almonte, and things first that they had in
25 common. Both of them, Judge, knowingly and voluntarily pled

1 guilty before Your Honor. They're here, and they're in this
2 courtroom. They came before Your Honor, they appear guilty,
3 they came before Your Honor and answered your Honors questions.
4 Both of them told the probation officers who are here today
5 that they are in fine mental health. Both of them Your Honor,
6 as seen through the evidence, were deliberate, were thoughtful
7 and were goal-oriented, with that goal once again being to
8 travel overseas and commit murder.

9 And how do we know that, Your Honor? They excluded
10 people from their conspiracy. As Mr. Welle spoke about, KR
11 introduced the UC, Bassem, to the defendants. And you hear
12 later in conversation, Mr. Alessa and Mr. Almonte tell the UC
13 not to talk to KR cause he can't be trusted, because they don't
14 trust him. So you, the UC, better not tell him about our
15 conspiracy. They know who to include. They knew that they
16 were serious. They knew what they wanted to do, and they
17 didn't want to be stopped. When they got concerned about other
18 people, they kept them out. They fabricated cover stories.
19 They had a conversation where they talked about what they would
20 say if they were stopped by law enforcement, and what they
21 would say to others, post arrest. Mr. Almonte's family was
22 surprised in part because he had told them he was going to
23 North Carolina, when instead he was gone flying to Egypt with
24 the intent to go to Somalia, join al Shabaab, and kill. They
25 also booked round trip tickets. And that may sound like

1 nothing. Defense counsel tries to treat it as nothing, but Mr.
2 Almonte, told also the UC why that was important, because it
3 would look worse, and it might draw law enforcements attention
4 if they just booked an one-way ticket, even though it was going
5 to cost more. And the records show Mr. Almonte was very
6 concerned with spending money, even though it would cost more,
7 Mr. Almonte dictated that round trip tickets be bought because
8 he was goal-oriented, thoughtful and deliberate. And they also
9 sought to avoid detection, just one example, and this is
10 repeated conversations. They take batteries out of their
11 phones and leave their phones out of the room because they are
12 worried there they are being surveilled by law enforcement, and
13 they want to make sure in these private conversations, they
14 argue and talk about their criminal activity, they're not
15 surveilled or overheard.

16 Concerning Mr. Alessa, Your Honor, another fact of his
17 mental condition is that he is a skilled liar and manipulator
18 later. He spoke proudly of that in one of the conversations
19 with Almonte and the UC, when they talked about their cover
20 stories, how one of his expertise was being able to lie and
21 manipulate people, just like he lied to law enforcement when he
22 came back in 2007, and lied in the grand jury and 2007. In
23 fact, Your Honor, the experts agreed that he's a liar and a
24 manipulator. Dr. Drob, the only defense expert who made the
25 decision, who took the time to meet with defendant Alessa, said

1 that Mr. Alessa showed a pronounced tendency to avoid self
2 disclosure, and that Mr. Alessa may be manipulative in his
3 relationships. Dr. Katz, one of the Government's experts, Your
4 Honor, Mr. Alessa repeatedly attempted to control the
5 interview. Mr. Alessa would remain vague and ambiguous when
6 discussing information that showed culpability, or did not
7 present him in a positive light. Dr. Patterson, a forensic
8 psychiatrist, one of the leaders in the field that said that
9 Mr. Alessa has demonstrated being extremely manipulative.

10 While we're talking about the experts concerning Mr.
11 Alessa, Dr. Patterson and Dr. Katz do make a diagnosis,
12 anti-social personality disorder, which is a persuasive pattern
13 of disregard for and violation of the rights of others that
14 begins in childhood. So that explains why their reports have
15 many instances from their childhood from Mr Alessa and Mr.
16 Almonte, or early adolescence, and continues into adulthood.
17 That diagnosis, Your Honor, the Government submits to
18 consistent with the defendant's guilty plea, and consistent
19 with the evidence. And they also find that Mr. Alessa
20 continues to be a risk of violence. And, Your Honor, defense
21 counsel said that Dr. Katz and Dr. Patterson rely on the July
22 25th, 2012 incident at MDC, which the Government understands
23 your comments on, is not speaking further on it in light of
24 that. There's only one problem with that, Your Honor,
25 defendant's wrong. Dr. Katz signed his report for Mr. Alessa

1 June 22nd, 2012. That's his only report in this case. There's
2 no way he could rely on an incident that didn't happen yet,
3 even if the defense counsel says he did.

4 As Your Honor is well aware, there are also defense
5 counsel experts in this case. They did not make a diagnosis
6 unlike Dr. Patterson and Dr. Katz. Dr. Abudabbeh, most
7 important thing, Your Honor, if I can leave you with one thing
8 about that doctor, she never met with the defendant. She did
9 not administer tests. Instead, it appears she relied on
10 documentation submitted to her by defense counsel. And what
11 she did was she then spoke about her theory, her theory that it
12 would appear any first generation Palestinian, Muslim, should
13 be excused for conspiring to kill people, or show leniency for
14 conspiring to kill people over three and a half years because
15 of his cultural history.

16 Your Honor, defense counsel talked about the
17 Government painting in its presentation. The Government
18 submits to Your Honor, Dr. Abudabbeh is painting in a very
19 broad stroke which does not apply to the defendant, that would
20 have become clear to her, if she ever would have met him. Dr.
21 Drob, the other defense expert for Mohamed Alessa, once again,
22 no diagnosis as to Alessa's present mental condition. Like Dr.
23 Abudabbeh, he concludes that the defendant was in a fantasy,
24 tries to diminish his culpability, counter to what the
25 defendant himself told you during his plea, that he knowingly

1 and intentionally entered into a conspiracy to kill.

2 Your Honor, concerning Carlos Almonte and his mental
3 condition, much like Mr. Alessa, deliberate, thoughtful,
4 goal-oriented. He saved thousands of dollars in furtherance of
5 this conspiracy to commit murder overseas. He had a job, he
6 had a skill in computers, and he used it for one purpose, Your
7 Honor, to fulfill his desire to kill. That's where his money
8 went.

9 And often defense counsel spoke about paint balling,
10 or going out and spending other funds. Mr. Almonte often said
11 they shouldn't spend the money on it because the money was for
12 their conspiracy. Mr. Almonte was also law enforcement
13 conscious. He deleted -- I'm sorry, he made Alessa delete
14 Jihadist videos prior to their travel to Jordan in 2007. And
15 he counseled Alessa from how to prevent law enforcement from
16 recovering information from his hard drive. As I told Your
17 Honor, he recommended buying round trip tickets. And in
18 addition, he researched. He collected information about other
19 cases, and other Jihadist, and FTOs, and he did this to help
20 him and his co-defendant succeed in their plan to kill.

21 For instance, he learned about the Fort Dix case. And
22 why was this important, Your Honor? Because when the UC and he
23 talked about the idea of going paint balling, defendant Almonte
24 says no, and specifically references the Fort Dix case. And
25 part of the reason the Fort Dix defendants, in his opinion, got

1 caught, because there was a video of them training that was
2 discovered by law enforcement. So Almonte, based on his
3 collection of material, says no. He also collected material
4 about al Shabaab, the group they intended to go join. And he
5 even lectured Alessa and the UC about al Shabaab was a main
6 group in Somalia. He was goal-oriented. He was thoughtful.
7 He, like his co-defendant, knew what they were doing.

8 Once again, Your Honor, concerning the experts, Dr.
9 Patterson and Dr. Katz, same diagnoses, antisocial personality
10 disorder, continued risk of violence.

11 The defense experts, Dr. Rosenfeld, in perhaps one of
12 the more clear statements by defense counsel experts given the
13 limited nature of the present evaluation, no definitive
14 diagnoses can be offered. Dr. Xenakis, Mr. Almonte does not
15 currently manifest a definite psychiatric, medical or emotional
16 condition.

17 Your Honor, moving on from mental condition, I have a
18 few more areas to talk to you about. One of the them is the
19 violent nature of the defendants. Mr. Almonte, this is stated
20 in our briefs, I'm only going to hit a couple of highlights for
21 it. He joined a street gang. He carried a knife to use
22 against others. He punched a 16-year old in the face. He
23 threatened a family member with violence if that family member
24 told law enforcement about him and his co-defendant's
25 activities. And he attacked his younger brother and smashed a

1 glass frame picture over his head.

2 Concerning Mr. Alessa, he -- there is evidence that he
3 punched his father. As I told Your Honor, he threatened to
4 blow up a school. He also threatened students at a school.
5 And as I referenced to Your Honor earlier, he struck and choked
6 AH, who left him as a result.

7 Your Honor, prior to finishing up, what I'd like to do
8 is paint a picture for Your Honor of the morning of June 5th,
9 2010, the morning the defendants chose to go to JFK Airport in
10 furtherance of their conspiracy to kill overseas. The day they
11 chose to try to join al Shabaab and kill. On that day, Mohamed
12 Alessa was living at home with his parents, who loved and
13 financially supported him. He was living at home with a family
14 who was funding his education. Who begged him to go to school.
15 And was living at home with his family who paid for his travel
16 in 2007, and paid for his travel, the Government believes, in
17 2010, because the defendant lied to them and didn't tell them
18 that he was going to kill. That's what he did.

19 Mr. Almonte, he lived at home as well, with a
20 hard-working, loving, extended, supportive family. He had a
21 job that paid him, and paid him pretty well, at least enough to
22 save up to help his conspiracy to kill. He also possessed a
23 technical skill in computers.

24 Your Honor, the Government submits to you they had
25 what many people in this country and in this world would pray

1 for, a solid family base, three squares a day, and more than
2 that. But that is not what the defendants wanted, Your Honor.
3 The defendants wanted to do what they watched and what they
4 did. Mr. Alessa, Your Honor, wanted to go overseas, join al
5 Shabaab, kill on their behalf, like that video that Mr. Welle
6 spoke to you about, the IED, attacked the vehicle, and a body
7 going flying. In fact, Mr. Alessa was so interested in this
8 type of situation that he made a video, Your Honor. He made an
9 interrogation video. In this video, he and I believe another,
10 dressed up a boxing mannequin, the upper torso of a body, to
11 look like a hostage, a U.S. soldier hostage. Mr. Alessa,
12 masked, handkerchief over his face, then questioned that
13 hostage. He questioned why he was there. He accused him of
14 atrocities. And then he repeatedly, repeatedly, repeatedly
15 stabbed that mock hostage.

16 Your Honor, Mr. Alessa had a family who was loving and
17 supportive, and that wasn't what he wanted, he wanted to go
18 overseas, he wanted to kill.

19 Mr. Almonte, what did he want? Once again, you've
20 heard Mr. Welle speak about what Mr. Almonte viewed. The
21 sniper video, hauntingly, with the cross hairs on a soldier,
22 and in the last moments of their life. The beheading videos
23 where people are crudely, crudely killed. The defendant had,
24 the morning of June 5th, a life at home, a job, and financial
25 support. What they wanted, Your Honor, was to fulfill their

1 conspiracy from October of 2006, to when they left, or I should
2 say, tried to leave, Your Honor, to kill.

3 And in conclusion, Your Honor, the Government would
4 leave you with this. You heard from the defense first today.
5 Their arguments, Your Honor, do not support a variance, much
6 less the significance variance they seek from the low end of
7 the Guideline range to which they stipulated. Instead, as I
8 explained to you, and Mr. Welle explained to you, the
9 defendants' actions, including their nearly four-year
10 conspiracy, including their trip to Jordan, including the overt
11 acts they took in furtherance of the conspiracy, and including
12 their attempt to leave this country on June 5th, 2010, to kill,
13 and the factors of 3553(a), and the seriousness of the crime,
14 the need to protect the public, and the need for deterrence,
15 Your Honor, warrant the sentence the Government is seeking,
16 specifically 30 years imprisonment for each defendant. Thank
17 you, Judge.

18 THE COURT: Alright. Thank you, very much. We'll
19 take a short recess and then I'll impose sentence.

20 (Recess)

21 THE COURT: Alright. I'll start with Mr. Alessa, and
22 you could just remain seated. It will be a reasonably lengthy
23 process. I just note from the beginning that I've reviewed the
24 extensive memoranda and exhibits which counsel have submitted,
25 read the reports of the United States, of the defense experts.

1 18 letters I've received from Mr. Almonte's friends, relatives,
2 who portrayed a picture of what Mr. Almonte will achieve in the
3 future. Obviously, he hasn't during the course of the events.
4 And I've heard the arguments of counsel. The statement of
5 reasons will be, the Court adopts the presentence investigation
6 report with the following changes. There are additional
7 comments concerning certain factual information in the report
8 which I will modify. Because this report will go on to the
9 Bureau of Prisons, that may be relied upon. And the
10 modifications, although Alessa does not dispute the Guideline
11 calculation, he has submitted objections to the presentence
12 investigation report consisting of 18-and-a-half, single-spaced
13 pages. It is, in effect, rewriting the presentence
14 investigation report to reflect assorted facts that support the
15 arguments set forth in Alessa's brief in support of a variance.

16 There are two factual contentions in the PSIR that
17 require comment. Paragraph 133A of the PSIR, recites that
18 Alessa and Almonte, while in presentence detention, assaulted
19 another inmate in and outside the cell area. PSIR refers to
20 the incidents as a possible ground for depriving both
21 defendants in the reduction and acceptance of responsibility.
22 And the Government points to the incident as indicative of the
23 defendants indicative violent nature. The alleged victim was a
24 planter to make extortionate demands from their commissary
25 items, and threatened to use force on his demands. It was

1 defendants' justifiable resistance that resulted in the episode
2 that was the subject of paragraph 133A. It is not a basis to
3 challenge defendants' acceptance of responsibility or to
4 establish continuing violent tendencies.

5 The 2007 trip to Jordan is the subject of various
6 paragraphs of the PSIR. Each defendant stipulated on the
7 occasion that, in his pleas, the trip was in furtherance of the
8 conspiracy, which the Court accept as corrects.

9 Less the objections, much of the material set forth in Alessa's
10 objections is irrelevant. Much of the recital of the argument
11 set forth in Alessa's sentencing memorandum, they are dealt
12 with in the Courts statement of reasons.

13 Second, no count of conviction carries a mandatory
14 minimum sentence. The Court determines that the advisory
15 Guideline range is as follows. Total offense level, 42;
16 criminal history category, 6; imprisonment range, 360 months to
17 life; supervised release, life; fine range, \$25,000 to
18 \$250,000. Fourth, the fine is waived because of the defendants
19 inability to pay. The sentence imposed is below the advisory
20 guideline range.

21 On the defense motion for a sentence outside of the
22 advisory guideline system, to which the Government objected,
23 and the reasons for this is the nature and circumstances of the
24 offense, the history and characteristics of the defendant.
25 Pursuant to U.S. Sentencing Guidelines Section 3553(a), to

1 reflect the seriousness of the offense, to afford adequate
2 deterrence to criminal conduct; to protect the public from
3 further crimes of the defendant; to provide the defendant with
4 needed educational, or vocational, medical care or treatment in
5 the most effective manner. I'm going to give to counsel and to
6 the public an extended statement of reasons, but I'll summarize
7 those reasons at this point.

8 The Court has prepared a detailed statement of reasons
9 why it is granting a variance to Mohamed Alessa and Carlos
10 Almonte. The statement will be placed on the record during the
11 imposition of sentence. Mr. Alessa can be summarized as
12 follows. Alessa pled guilty to the most serious of crimes,
13 terrorism in the form of conspiracy to commit murder for
14 religious reasons of individuals outside the United States.
15 The lowest guideline prison term is 360 months, and preeminent
16 considerations are to ensure that Alessa no longer possess a
17 danger to the community, and deterrence of others who might
18 engage in a similar conspiracy.

19 The evidence shows that Alessa suffers from serious
20 psychological impairment from early childhood resulting from
21 continual hostile anti-social behavior. And in later years, it
22 took the form of adoption of extreme Muslim religion, Jihadism,
23 which called for the death of those individuals who disagreed
24 with him, whether a Muslim or non-Muslim. Alessa saturated the
25 waking moments with video speeches and other material showing

1 the urging and the part of him lead to him being as involved
2 and Mr. Almonte's preparation for and attempted flight to Egypt
3 to engage in combat on behalf of extremists in Somalia.

4 The Government psychiatrist and psychologist expressed
5 the opinion that Alessa's anti-social personality traits are,
6 in effect, permanent. And the Government cited an episode of
7 prison violence as evidence that Mr. Alessa and his
8 co-defendant remain violent. The psychiatric evidence of any
9 untreatable condition was effectively countered by Mr. Alessa
10 and Mr. Almonte's expert, and irrefutable experts established
11 that prior episode was not the result of defendant's
12 aggressiveness, but rather they justifiably were defending
13 themselves against an unprovoked attack against a dangerous
14 inmate with a weapon.

15 Lengthy prison term and intensive psychiatric
16 treatment during this term, plus light supervision thereafter,
17 will ensure that Alessa will not be a danger to the public
18 and will be a deterrent to others, considering all the
19 circumstances, including Alessa's youth and the fact that no
20 injuries to anyone resulted from the failed conspiracy, leaves
21 the Court to conclude that 360 months is greater than necessary
22 to comply with the purposes of Section 3553(a). This lengthy
23 guideline sentence is terrorism, 12-level increase, and the
24 base level of the automatic classification of the criminal
25 history as 6. This produces the excessiveness to which

1 reference has been made.

2 The Court concludes that a sentence of 22 years, 264
3 months, is sufficient but not greater than necessary to comply
4 with the purposes of Section 3553(a), and takes into account
5 Alessa's youth, he's emotional instability, and likelihood of
6 treatment in the long run. This is somewhat longer than the
7 sentence to be imposed upon Almonte. Alessa was emotional and
8 more deeply involved in Muslim causes, and Almonte demonstrated
9 empathy for other human beings. Alessa showed little concern
10 for the well-being of others. Psychiatric treatment will be
11 recommended and supervised release will be imposed for life.
12 And six, restitution is not applicable.

13 The formal sentence will be, it is pursuant to the
14 Sentencing Reform Act of 1984, it is the judgment of the Court
15 that the defendant Mohamed Alessa is hereby committed to the
16 custody of the Bureau of Prisons, to be in prison for a term of
17 264 months.

18 Upon release from imprisonment, the defendant shall be
19 placed on supervised release for the remainder of his lifetime.
20 Within 72 hours of release from the custody of the Bureau of
21 Prison, the defendant shall report in person to the probation
22 office to the district to which he is released. While on
23 supervised release, the defendant shall not commit another
24 federal, state or local crime; shall be prohibited from
25 possessing a firearm or other dangerous device; shall not

1 possess an illegal controlled substance; and shall comply by
2 the other standard conditions that have been adopted by this
3 Court.

4 Based on the information presented, the defendant is
5 excused from the mandatory drug testing provision. However,
6 the defendant may be requested to submit to drug testing during
7 the period of supervision, if the probation officer determines
8 a risk of substance abuse. In addition, the defendant shall
9 comply with the following special conditions. Computer
10 monitoring. You shall submit to an initial inspection by the
11 U.S. Probation Office to any unannounced inspection of your
12 computer equipment. This includes but is not limited to
13 personal computer, personal digital assistance, entertainment
14 consoles, cellular telephones, or any electronic media device
15 which is owned or accessed by you. You shall allow the
16 installation on computer of any hardware or software system
17 which the monitor computer used. You shall pay the cost of the
18 computer monitoring program. You shall abide by the standard
19 conditions of computer monitoring. Any dispute as to the
20 applicability of this condition shall be decided by the Court.

21 Mental health. You shall undergo treatment in a
22 mental health program approved by the United States Probation
23 Office until discharged by the Court. As necessary, said
24 treatment may also encompass treatment for gambling, domestic
25 violence, and/or anger management, as approved by the United

1 States Probation Office until discharged by the Court.

2 Probation officer shall supervise your compliance with this
3 condition.

4 Prohibition on gang criminal associations. You shall
5 refrain from associating with, or being in the company of any
6 members of any tradition, or nontraditional organized crime
7 group or any other identified threat group. You shall be
8 restricted from frequenting any location where members of said
9 organizations are known to congregate or meet. You shall not
10 have in your possession any item, nor paraphernalia which has
11 any significance or evidence of any affiliation with said
12 organizations.

13 You are prohibited from occurring any new credit
14 charges, opening additional credit lines, or incurring any new
15 monetary loan obligation or debt by whatever name known,
16 without the approval of the U.S. Probation Office. You shall
17 not encumber or liquidate interest in any assets unless it is
18 in direct service of a fine, or unless it is otherwise stated,
19 or in payment after the special assessment, which the debt will
20 the approval of the Court. It is further ordered that
21 defendant shall pay to the United States a total special
22 assessment of \$100, which shall be due immediately.

23 I'm giving to counsel and others the extended
24 statement of reasons for the variance. It's supposed to go to
25 each counsel. And then there will be a couple for the press.

1 Yes, one to the U.S. Attorney.

2 In conclusion, I advise you, Mr. Alessa, that subject
3 to any waiver of the right to appeal contained in the plea
4 agreement, you have a right to appeal from the sentence and the
5 judgment and notice of appeal must be filed within ten days.
6 If you do not have the funds to pay a filing fee, the Clerk of
7 the Court will file a notice of appeal on your behalf, and an
8 attorney will be appointed to represent you.

9 With regard to Mr. Almonte, I've reviewed the
10 submissions of counsel, reports of the expert witnesses, heard
11 the argument of counsel, and the statement of defendant here in
12 court in preparation for the sentencing. The statement of
13 reasons will be the Court adopts the presentence investigation
14 report with the exception noted to certain of the factual
15 findings. And as to that, I would note, the PSIR relating to
16 Almonte is virtually a duplicate, except a certain paragraph
17 relates solely to Almonte's background and unique events.

18 Almonte does not dispute the guideline calculations.
19 He has submitted an objection to the PSIR, which contain a
20 number of comments contained in the PSIR seeking to portray
21 Almonte in a more sympathetic light. Paragraph 133 concerning
22 the fracas in the correctional institution where the defendants
23 were being held pretrial, and which has been mentioned in
24 connection with Alessa's objection to PSIR, misstates the
25 significance of the incident. That is the defendants'

1 justified resistance to an attempt to extort from them and
2 their defense in a knife-like attack. And the PSIR refers to
3 the violence, depriving both defendants as acceptance of
4 responsibility. And the Government points to the defendants as
5 indicative of the defendants' continuing violent nature. It is
6 not a basis for questioning their acceptance of responsibility,
7 or indicia of continued dangerousness, except as noted above,
8 and except as the statement of reasons requires. The Court
9 accepts the findings of the Alessa and Almonte PSIR. The
10 calculation guidelines as set forth in each PSIR remain
11 unchanged and are accepted.

12 Second, no count of conviction carries a mandatory
13 minimum sentence.

14 Third, the guideline calculation is as follows. Total
15 offense level, 42; criminal history category, 6; imprisonment
16 range, 360 months to life; supervised release range, any period
17 to life; fine range, \$25,000 to \$250,000. The fine is waived
18 because of the defendant's inability to pay. The sentence
19 imposed by the Court is below the advisory guideline range in a
20 motion of defendant's to sentence outside, to which the
21 Government objected. The parties handed out a statement of
22 reasons for this conclusion, but on the record I'll place a
23 summary of those reasons.

24 The Court has stated a detailed statement of reasons
25 why it is granting a variance to Carlos E. Almonte and Mohamed

1 Alessa. The statement of reasons will be placed on the record
2 before imposition of sentence. As to Mr. Almonte, it can be
3 summarized as follows.

4 Almonte pled guilty to the most seriousness of crimes,
5 terrorism in the form of a Jihadist to commit murder for
6 religious reasons of individuals outside the United States.
7 The lowest guideline prison term is 360 months. The preeminent
8 considerations are ensuring that Almonte no longer possess a
9 danger to the community and deterrence of others who might
10 engage in similar conspiracy.

11 The evidence shows that Almonte suffered from serious
12 psychological impairments from earliest childhood. In later
13 years, although coming from a Catholic family, he's adopted an
14 extreme form of Muslim religion, Jihadism, which called for the
15 death of those who disagreed with it, whether Muslim or
16 non-Muslim. Almonte saturated his waking moments with video
17 speeches, speeches and other materials showing an urging,
18 martyrdom of the cause. This lead to Alessa's preparation for
19 and attempted flight to Egypt to attempt to engage in combat on
20 behalf of extremists in Somalia.

21 The Government psychiatrists and psychologists express
22 the opinion that Almonte's anti-social personality traits are,
23 in effect, permanent, and the Government cited an episode of
24 presentence violence as evidence that Almonte and his
25 co-defendant remain violent. The psychiatric evidence of any

1 untreatable condition was effectively countered by Alessa's,
2 and Almonte's experts and irrefutable evidence establish that
3 the prison episode was not the result of defendants'
4 aggressiveness but rather that they justifiably defended
5 themselves against an unprovoked attack with a dangerous inmate
6 with a weapon. A lengthy prison term and extensive prison
7 psychiatrist treatment and life supervision thereafter will
8 ensure there Almonte will not be a danger to the public, and
9 will be a deterrent to others.

10 Considering all the circumstances, including Almonte's
11 relative youth, and the fact that no injuries to anyone
12 resulted from the failed conspiracy, leaves the Court to
13 conclude that 360 months is greater than necessary to comply
14 with the purposes of Section 3553(a). The lengthy guideline
15 sentence is a consequence of the terrorism enhancement. The
16 12-level increase is the base offense level, and the automatic
17 classification of the criminal history as 6. Were it not for
18 the terrorism enhancement, Almonte's base offense level would
19 have been 30, his criminal history would have been 1, based on
20 a conviction for underage consumption of alcohol, which leads
21 to a criminal history category of 1. His sentence range would
22 have been 97 to 121 months. The Court concludes that a
23 sentence of 20 years, 240 months, is sufficient but not greater
24 than necessary to comply with the purposes of Section 3553(a),
25 and takes into account Almonte's youth, emotional instability,

1 and the likelihood of effective treatment in the long run.
2 This is somewhat shorter than the sentence imposed upon Alessa.
3 Almonte is less deeply involved emotionally than Alessa in
4 Muslim causes, particularly, in Palestinian aspects. And
5 Almonte shows empathy for other people. Psychiatric treatment
6 will be recommended and supervised release will be imposed for
7 life.

8 Other restitution is not applicable. And the formal
9 sentence will be, pursuant to the Sentencing Reform Act of
10 1984, it is the judgment of the Court that the defendant Carlos
11 E. Almonte is hereby committed to the custody of the Bureau of
12 Prison, to be in prison for a term of 240, months. Upon
13 release from imprisonment, defendant shall be placed on
14 supervised release for the remainder of his lifetime.

15 Within 72 hours of release from the custody of the
16 Bureau of Prisons, defendant shall report in person to the
17 probation office in the district to which the defendant is
18 released. While on supervised release, the defendant shall not
19 commit another, federal, state, or local crime; shall be
20 prohibited from possessing a firearm or other dangerous device;
21 shall not possess an illegal, controlled substance; and shall
22 comply by the other standard conditions that have been adopted
23 by the Court. Then you must submit to one drug test within 15
24 days of commencement of supervised release, and at least two
25 tests thereafter, as determined by the probation officer.

1 In addition, the defendants shall comply with the
2 following special conditions. Computer monitoring. You shall
3 submit to an initial inspection by the U.S. Probation Office,
4 than to any unannounced examination during supervision of your
5 computer equipment. This includes but is not limited to
6 personal computer, personal digital assistance, cellular
7 telephone, and/or any electronic device which is owned or
8 accessed by you.

9 You shall not allow the installation on your computer
10 of any hardware or software system with monitor computer use.
11 You shall pay the cost of the computer monitoring program. You
12 shall abide by the standard conditions of the computer
13 monitoring. Any dispute as to the applicability of this
14 condition shall be decided by the Court.

15 You shall refrain from socializing with or being in
16 the company of any members of any traditional or
17 non-traditional organized crime group or any other identified
18 threat group. You shall be restricted from frequenting any
19 location where members of any said organizations are known to
20 congregate or meet. You shall not have in your possession any
21 item or paraphernalia which has any significance or an y
22 evidence of an affiliation with said organizations.

23 Mental health treatment. You shall undergo treatment
24 in a mental health program approved by the United States
25 Probation Office until discharged by the Court. As necessary,

1 said treatment may also encompass treatment for gambling,
2 domestic violence, and/or anger management, as approved by the
3 United States Probation Office until discharged by the Court.
4 Probation officer shall supervise your compliance with this
5 condition. You are prohibited from incurring any new credit
6 charges, opening additional lines of credit, or incurring any
7 new monetary loan obligation or debt by whatever name known
8 without the approval of the U.S. Probation Office. You shall
9 not encumber or liquidate interest in any assets or otherwise
10 until the special assessment is paid, unless otherwise
11 authorized by the Court.

12 It is further ordered that the defendant shall pay to
13 the United States a total special assessment of \$100, which
14 would be due immediately.

15 I advise you, Mr. Almonte, that subject to any
16 limitations or waiver in the plea agreement, you have the right
17 to appeal from the sentence or the judgment of conviction. A
18 notice of appeal must be filed within ten days. If you do not
19 have the funds to pay for the filing fee, the Clerk of the
20 Court will file a notice of appeal on your behalf. And if you
21 do not have the funds to pay for an attorney, an attorney will
22 be appointed to represent you.

23 Is there anything else we have to do? No, nothing
24 else?

25 MR. KOGAN: Well, Your Honor, if we can put on the

1 record that the defendants have reviewed the PSR, if we can
2 place on the record that counsel's affirmation and verification
3 that the defendants, themselves, have received and reviewed the
4 PSR.

5 THE COURT: Mr. Cohen?

6 MR. COHEN: Correct, Judge.

7 MR. PATTON: We have.

8 THE COURT: You've seen and reviewed, and your client
9 has seen and reviewed the PSR?

10 MR. PATTON: Yes, Your Honor.

11 THE COURT: Okay. I guess THAT will recess the
12 session, and I appreciate THE hard work which has gone into it.
13 That will be it.

14 MR. PATTON: Your Honor, on behalf of Mr. Almonte, I
15 would ask that you recommend to the Bureau of Prisons THAT he
16 be housed in close proximity, as close as possible, to his
17 family in northern New Jersey.

18 MR. COHEN: And the same holds true with Mr. Alessa.

19 THE COURT: Alright. We'll put on the record that the
20 Court recommends that the place of confinement BE as close as
21 possible to the homes of the prospective defendants. Alright.

22 (Matter concluded)

23

24

25